

1965 Present : H. N. G. Fernando, S.P.J. and G. P. A. Silva, J.

H. M. UKKU AMMA, Appellant, and A. M. DINGIRI MENIKA
and another, Respondents

S. C. 143/1964—D. C. Kurunegala, 1477/L

Kandyan law—Donation—Revocability—Kandyan Law Ordinance (Cap. 59), ss 4, 5(d).

By a deed of gift governed by the Kandyan Law Ordinance (Cap. 59), a person donated certain immovable property to his niece "in expectation of receiving succour and assistance" from her during his life time. The gift contained also a statement in which the donor said: "I do hereby specially renounce the right to revoke the gift aforesaid".

Held, that section 5(d) of the Kandyan Law Ordinance prevented the donor from revoking the gift although the donee failed to render assistance to the donor.

APPEAL from a judgment of the District Court, Kurunegala.

W. D. Gunasekera, with *W. S. Weerasooria*, for the plaintiff-appellant.

Mark Fernando, for the defendants-respondents.

Cur. adv. vult.

October 7, 1965. H. N. G. FERNANDO, S.P.J.—

Section 5 of the Kandyan Law Ordinance (Cap. 59) provides that "it shall not be lawful for a donor to cancel or revoke . . . any gift, the right to cancel or revoke which shall have been expressly renounced by the donor, either in the instrument affecting that gift, or in any subsequent instrument, by a declaration containing the words 'I renounce the right to revoke' or words of substantially the same meaning . . .".

The question which arises on this appeal is whether Section 5 prevented the first defendant from revoking the deed P1, the relevant clause of which reads as follows :—

"I, Adikari Mudiyanseelage Dingiri Menika of Ipalawa in Dewamedde Korale for and in consideration of the natural love and affection and for other good causes which I have and bear unto my niece Herat Mudiyanseelage Ukku Amma of Ipalawa aforesaid and in expectation of receiving succour and assistance from her during my life time do hereby give grant convey and assure unto her the said Ukku Amma as a gift the land and premises in the schedule hereto described of the value of Rupees Five hundred (Rs. 500) of lawful money of Ceylon and I do hereby specially renounce the right to revoke the gift aforesaid."

The construction adopted by the learned trial Judge, and pressed by counsel for the defendants in appeal, is that the recital of the donor's "expectation of receiving succour and assistance" renders the gift different in character from an ordinary gift made from motives of love and affection; that the recital establishes the intention of the parties that the donee will in fact render assistance to the donor; that the gift was therefore conditional upon assistance being rendered and that the renunciation of the donor's right of revocation was subject to compliance with the condition for assistance. On the questions of fact involved, the learned Judge has held that the donor did intend and expect assistance to be rendered and that the donee failed to render such assistance.

Sections 4 and 5 of the Ordinance were obviously intended to clarify and perhaps also to simplify the law relating to the revocation of gifts made by persons governed by the Kandyan law. According to earlier decisions, some such gifts were revocable and others not, depending on the nature of the consideration for which they were made; also difficulty had been experienced as to the construction of language which might or might not constitute an effective renunciation of the right of revocation. Section 4 of the Ordinance confers on any donor an unrestricted right of revocation of any gift, except those referred to in Section 5. The excepted gifts are —

- (a) any gift of a specified description made to a temple;
- (b) any gift expressed to be in consideration of a future marriage, which subsequently takes place;
- (c) any gift creating a charitable trust;
- (d) any gift in which the right of revocation has been expressly renounced in a declaration of renunciation.

Although the first three classes of excepted gifts need not be considered on this appeal, I mention them in order to emphasise the intention of the Legislature that the question whether a particular deed of gift is capable of revocation should be determinable with reasonable certainty upon an examination of the deed. It should not ordinarily be difficult to decide whether a particular gift is of any of the first three classes specified in Section 5. Equally, in my opinion, it should not be difficult to decide whether a deed contains an effective clause of renunciation of the right of revocation. The ordinary meaning of the words "expressly renounced" is *exactly or definitely renounced* as opposed to *impliedly renounced*, and I am satisfied that those words have that meaning in Section 5 (d). There can be no question that in the deed I have now under construction the right of revocation has been *expressly* renounced in the manner intended by the statute, namely by a definite declaration in appropriate language. Having regard to the Legislature's intention that the right of revocation will be exercisable unless that right is renounced with reasonable certainty, I am unable to accept counsel's argument that in Section 5 (d) "*expressly* renounced" bears the meaning "*unconditionally* renounced".

Upon a strict construction of the Section, it might be thought that an express declaration of renunciation, even if stated to be subject to some condition or exception, would nevertheless bar the right of revocation despite the occurrence of facts contemplated in the condition or exception. It may not be unreasonable to impute to the Legislature an intention that the question whether a deed of gift is irrevocable should be ascertainable upon the face of the deed, and without the necessity of contemplating the occurrence of possible events. But for present purposes I will assume that the language such as "I renounce the right of revocation subject to the condition that the donee must render me support and assistance" will constitute an express but conditional renunciation, and that such a clause will permit revocation, if support and assistance is not rendered. It has been argued, upon that assumption, that the language in the deed under consideration is equivalent to the language I have employed above, and that there is here only a conditional renunciation, effective only so long as the donee actually renders assistance.

I must reject that argument, for the reason that, even if the parties did have such condition in mind, the condition is not *expressly*, i.e., clearly or definitely, stated in the deed. In the early cases, such as *Banda v. Hetuhamy*¹ it was stated that the principle of *Caveat emptor* must apply to contracts for the sale of land in the Kandyan Provinces. Because of the application of that principle, it became expedient for the Legislature to secure that the question whether a deed of gift is or is not revocable should be determinable with reasonable certainty upon an examination of the document. Although I have assumed that the Legislature did not intend to render ineffective an *express* reservation of the right of revocation framed in language such as that I have employed above, that assumption should not be extended to cover what can at best be termed the *implied* reservation contended for in this case. Since the Legislature did intend that a renunciation will be effective only if expressed in the document, then a condition qualifying the renunciation can only be effective if it is also "expressed".

This view is in line with that taken upon the construction of gifts made before the enactment of Chapter 59. Thus in *Kumarasamy v. Banda*² the operative clause in the deed was "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 in consideration of the love and affection I have towards her and with the object of obtaining succour and assistance from her during the life time of me the said Kiri Muttuwa Veda". It was held that the deed was not revocable despite the failure of the donee to render assistance. There is nothing in Chapter 59 which leads me to construe differently the similar language of the gift in this case. Even if the recital "in expectation of receiving succour and assistance" does establish an agreement on the part of the donee to render succour and assistance, it need not follow that the legal effect of

¹ (1911) 15 N. L. R. 193.

² (1959) 62 N. L. R. 68.

a breach of that agreement will be to revive the renounced right of renunciation. In some early decisions mentioned by Middleton, J. in *Tikiri Kumarihamy v. de Silva*¹, the Courts appear to have contemplated the appropriate alternative that the donee will be held bound to perform his agreement. That may well be a satisfactory means of enforcing an agreement contained in a contract of donation.

For these reasons, I hold that the gift P1 was not revocable. The appeal is allowed and decree will be entered granting the declaration prayed for.

Having regard to the facts as found by the learned District Judge, I make no order as to costs of the action and appeal.

SILVA, J.—I agree.

Appeal allowed.

