

1926.

Present: Lyall Grant J. and Jayewardene A.J.

IBRAHIM NATCHIA *et al v.* ABDUL CADER.

392—D. C. Puttalam, 3,801.

Muslim law—Donation—Death of donee—Right of revocation.

Under the Muslim law a donation cannot be revoked after the death of the donee.

A PPEAL from a judgment of the District Judge of Puttalam. The facts appear from the judgment.

Drieberg, K.C. (with *James Joseph*), for plaintiffs, appellants.

Hayley (with *Canakarathne* and *Cader*), for defendant, respondent.

October 4, 1926. LYALL GRANT J.—

One Mohomado Miskin owned among others two pieces of land called Nindeni Poomy and Periaculam Kado. He married twice ; his second wife, Ava Umma, is still alive.

By his first wife he had three daughters: Ibrahim Natchia, Meera Natchia, and Aysia Umma. By his second wife he had a son, Sahul Hameedo, born in 1900.

In 1910 Miskin executed on August 12 a gift to (a) Sahul Hameedo of the land Nindeni Poomy, (b) a gift to the three daughters of the land Periaculam Kado, and (c) a gift to all his four children and a grandchild of his residing house.

These deeds were registered on August 19, 1910. On April 22, 1918, Meera Natchia transferred her rights in Periaculam Kado to Sahul Hameedo. In 1919 Aysia Umma died, and Miskin re-acquired her rights from her husband.

Sahul Hameedo died on March 5, 1919, and his rights to Nindeni Poomy passed under the deed of gift to Ibrahim Natchia and Meera Natchia in equal shares.

The position at this date accordingly was that Ibrahim Natchia possessed a one-third share of Periaculam Kado plus a half share of Nindeni Poomy, while her sister Meera Natchia possessed a half share of Nindeni Poomy.

On October 6, 1919, Miskin purported to revoke the gift of Nindeni Poomy, but the deed of revocation is *ex facie* bad as it is not signed by all the parties interested, unless at that date Miskin retained the right to revoke.

On January 19, 1921, Ibrahim Natchia transferred her one-third share of Periaculam Kado to Miskin. The position then was that Miskin owned the whole of Periaculam Kado, and the two daughters had title each to a half share of Nindeni Poomy.

1926.
LYALL
GRANT J.

Ibrahim
Natchia v.
Abdul Cader-

Acting however, under his deed of revocation, Miskin on March 16, 1921, gifted to Ibrahim Natchia and her children property in the town of Puttalam, and to her children the whole of Nindeni Poomy.

On August 14, 1922, he revoked this gift. On August 14, Miskin, his wife (Ava Umma), and his daughter (Meera Natchia) leased to certain people the lands Nindeni Poomy and Periaculam Kado. Why Ibrahim Natchia did not join in this deed does not appear.

On August 18, 1922, Miskin gifted to Ibrahim Natchia Nindeni Poomy; and on the same date, he, his wife, and Ibrahim Natchia joined together in gifting to Meera Natchia a share of Periaculam Kado.

Other deeds were executed on the same date by which Miskin gave other pieces of land to Meera Natchia.

On January 9, 1922, Meera Natchia gave a promissory note for Rs. 15,000 to one Abdul Cader. This note was put in suit on June 21, 1924. Judgment on the note was given on August 7, 1924, and execution applied for on August 20, 1924. An undivided half share of Nindeni Poomy was pointed out by the plaintiff to the Fiscal and was seized.

A claim to the land seized was made by Ibrahim Natchia, who claimed under the deed of August 18, 1922. The claimant did not appear in support of her claim, and the claim was dismissed on October 7, 1924. The matter was reopened, and the claim was finally dismissed on March 18, 1925.

The present action is brought under section 247 of the Civil Procedure Code. The District Judge has dismissed the plaintiff's action, and from that decision the present appeal is taken.

The principal issues tried in the action were in substance—

- (1) Whether the original deed of gift of Nindeni Poomy was invalid for want of immediate seisin by the donee ?
- (2) If valid, was it revoked by the deed of cancellation of October 6, 1919 ?
- (3) If the deed is valid and the revocation inoperative, was there a subsequent family arrangement in pursuance of which the deed of August 19, 1922, donating Nindeni Poomy to Ibrahim Natchia was executed ?
- (4) If so, does the first plaintiff get an absolute title.
- (5) Had Miskin on August 19, 1922, title to Nindeni Poomy ?

1926.

LYALL
GRANT J.

Ibrahim
Natchia v.
Abdul Cader

All these issues were answered by the District Judge in the negative. The District Judge proceeded on the basis that the original deed must be governed by Roman-Dutch law, and not by Mohamedan law, insasmuch as paragraph 5 constitutes a *fidei commissum*.

It was argued in appeal that the parties being Mohamedans, the question of the donor's power to make a gift must be governed by Mohamedan law, and that under this law the deed was invalid, insasmuch as possession was never given to the donee and the gift therefore was never completed.

Under Mohamedan law, in a gift by a father to a minor child acceptance is not necessary, and possession by the father is deemed to be possession by the minor. (*Tyabji's Principles of Mohamedan Law, paragraphs 346 and 400.*)

It was, however, argued that in this deed the interposition of a life interest to the mother showed that no possession was given.

I do not think, however, that any right of possession was given to Ava Umma. All that the deed said was that she should possess the income of the property during her lifetime. Accordingly, I think that even dealing with the deed as a deed under Mohamedan law, it is valid.

The revocation was made after the death of the donee, and the death of the donee took away the donor's power to revoke. (*Tyabji's Principles of Mohamedan Law, paragraph 426.*)

The District Judge was therefore right in answering the first two issues in the negative, and the question whether Misikin had title to Ninden Poomy on August 19, 1922, must depend upon whether there was a family arrangement valid against creditors existing at that date. Such an arrangement is sought to be proved by a comparison of the various deeds executed before and on August 18, 1922.

I can find nothing in these deeds to show distinctly that Meera Natchia gave up her rights to Ninden Poomy, or that any land was transferred to her in consideration of her renunciation of these rights.

I think the District Judge was right in answering all the issues in the negative.

The appeal is dismissed, with costs.

JAYWARDENE A.J.—I agree.

Appeal dismissed.