1955 *Present :* Gratiaen, J., and Swan, J.

M. SINNA MARIKAIR, Appellant, *and* K. THANGARATNAM, Respondent

S. C. 481—D. C. Batticaloa, 559 (L)

Muslim Law—Donation by grandmother—Revocability—Muslim Intestate Succession and Wakfs Ordinance (Cap. 50), s. 3.

Under the proviso to section 3 of the Muslim Intestate Succession and Wakfs Ordinance a gift of immovable property by a Muslim grandmother to her grandchildren is revocable unless there are words in the deed from which a renunciation of her right of revocation appears either expressly or by necessary implication.

APPEAL from a judgment of the District Court, Batticaloa.

S. J. V. Chelvanayakam, Q.C., with *J. N. David*, for the defendant appellant.

V. A. Kandiah, with *S. Sharvananda*, for the plaintiff respondent.

Cur. adv. vult.

November 23, 1955. GRATIAEN, J.—

The only question for our decision on this appeal is whether a gift of immovable property by a Muslim lady to her grandchildren in terms of a notarial transfer dated 11th December 1935 was irrevocable.

According to the *Minhaj et Talibin* (Howard's translation) page 235 "a father or any ancestor" may, under the Shafei law, revoke a gift in favour of a child or other descendant, provided that the donee has not irrevocably disposed of the thing received, e.g., by selling or dedicating it. Sir Roland Wilson "suspects", however, that the term "ancestor" in this passage only includes "the true grandfather but not female ancestors or false grandparents". *A Digest of Anglo-Mohammedan Law* (1930 Edn.) page 430. The learned District Judge adopted this latter opinion, and held that the deed was irrevocable.

The proviso to section 3 of the Muslim Intestate Succession and Wakfs Ordinance (Cap. 50) was enacted for the special purpose of relieving Judges in Ceylon of the responsibility of solving these knotty problems. The proviso expressly states :

> ". . . no deed of donation shall be deemed to be irrevocable unless it is so stated in the deed . . . ."

As the deed of gift in question was made after the proviso came into operation, it is quite unnecessary for us to determine what precisely

is meant by the word " ancestor " appearing in Mr. Howard's admirable translation into English of Mr. Van den Berg's French translation of a treatise written in Arabic. The proviso is intended to remove doubts and difficulties on issues of this kind. As Garvin J. observed in *Razeeka v. Mohamed Sathuck* [1], " 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 (the proviso to) section 3 of the Ordinance. " Garvin J's opinion was cited with approval in *Rafeeka's case* [2] and, with respect, I think that it should be followed. Ever since the Ordinance passed into law, a Mohammedan deed of donation (whoever the donor may be) must be deemed to be revocable unless the contrary is so stated in the document itself. *Saraumma v. Mainona* [3] has decided nothing which compels us to take a different view.

Mr. Kandiah argued that the Ordinance ought not to be given an interpretation which may possibly have the result of introducing a violent change in what he described as " the common law right of Muslims ". With respect, the Ordinance does not purport to change the general law of Ceylon. It merely limits in certain ways the extent to which recognition can reasonably be given to the personal laws of a particular section of the community. The necessity for this limitation became apparent when the Courts found it increasingly difficult to determine the true scope of certain aspects of those personal laws. The language of section 3 and its proviso are clear and unambiguous, and cannot work hardship to Muslim donors and donees who take the trouble to examine it before entering into transactions of the kind to which this action relates.

In the present case, I find no words in the deed from which a renunciation of the right of revocation appears either expressly or by necessary implication. Accordingly, the donor was entitled to revoke the gift, and she did so in fact. Mr. Kandiah conceded that if this be so, the judgment under appeal must be varied by declaring the plaintiff entitled only to an undivided ¼ share of the lands in dispute and to damages at Rs. 18·75 per month from 27th February 1950 until they are restored to their rights of co-ownership. The appellant must be paid his costs in both Courts.

SWAN, J.—I agree.

Judgment varied.

[1] *(1931) 33 N. L. R. 176 at 179.* [2] *(1931) 33 N. L. R. 295.*
[3] *(1948) 50 N. L. R. 319.*