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

1929.

MARICAR *v.* UMMA.

186—D. C. Jaffna, 23,707.

Muslim law—Gift by parents to children—Reservation of life-interest—No acceptance on possession—Validity.

Where Muslim parents conveyed to their minor child by a deed, styled a deed of settlement, a land reserving to themselves a life-interest and the right to mortgage or transfer the land, and there was no acceptance on behalf of the minor,—

Held, that the deed was inoperative to pass title to the donee.

APPEAL from a judgment of the District Judge of Jaffna.

In this action the validity of a deed of gift by a Muslim and his wife in favour of their children was in question. The deed was styled a deed of settlement, it was executed by the parents and was not accepted by the donees. The material paragraph was as follows: "We do hereby declare that as we have life-interest on the said land with its appurtenances hereby conveyed into them by way of settlement, they are to possess and enjoy the same after our death, that we have the right and power to mortgage or transfer the said land, when it is necessary for us."

The learned District Judge held that the deed was invalid.

1929.

Maricar v. Umma

Croos da Brera, for first defendant, appellant.—The case of *Meydeen v. Abubakker* [1] has been distinguished in the later case of *Abdul Rahim v. Hamidu Lebbe*,[2] where it was held that, in the case of a gift to minor children of property in the father's possession, the gift is complete on the execution of the deed. Similarly, the reservation in favour of the mother of the right to take the income was held not to invalidate the gift (*Ibrahim Natchia v. Abdul Cader* [3]). The decision reported in *Ramanathan's Reports* (1877) page 87 is a direct authority for the proposition that in the case of a gift in favour of children it is not invalidated by the fact that a life-interest is reserved and the deed is conditioned to take effect after the death of the donor. This is a judgment of two Judges and does not appear to have been considered in the later judgments. The principle laid down in this decision is not defeated by the reservation of a right to mortgage or transfer. Under the Muslim law such a reservation can be ignored and full effect given to the gift. The requirement as to delivery of possession appears to be a rule made at a time when property was chiefly movable and a gift was attended with less formalities. There is no reason why this rule should be now enforced rigorously. The tendency of the Courts has been to recognize a gift as much as possible. Counsel cited *Ameer Ali, Muhammedan Law*, pp. 134 and 142.

Subramaniam, for plaintiff, respondent, not called upon.

October 1, 1929. LYALL GRANT J.—

This is an appeal from the District Court of Jaffna. The question is one of the validity or the construction of a certain deed made by a Muslim and his wife in favour of their children. The first issue between the parties was " Did this deed convey title in a one-third share of the land to the second defendant." The learned District Judge says that this issue was treated as the radical issue in the case, and he heard argument on it. He arrived at the conclusion that the deed was invalid.

The deed is called by the parties a deed of settlement. It is executed by the parents alone, and there is nothing in the deed to show acceptance on behalf of the donees. The effective words are " This day we have conveyed unto them (the children) by way of a settlement subject to the undermentioned conditions the said land, &c." Immediately following these words are the following words : " We do hereby declare that as we have life-interest on the said land with its appurtenances hereby conveyed unto them by way of a settlement, they are to possess and enjoy the same after our death, that we have right and power to mortgage or transfer the said land when it is necessary for us, &c."

[1] *(1919) 21 N. L. R. 284.* [2] *(1926) 28 N. L. R. 136.*

[3] *(1926) 28 N. L. R. 316.*

The case was argued in the lower Court on the footing that this was a deed of donation, and an argument was put forward that notwithstanding the reservation of a life-interest the deed was valid in so far as the donee (the second defendant) was concerned, she being a minor in 1911, and the authority of *Abdul Rahiman v. Hamidu Lebbe* [1] was quoted. The learned District Judge assumed for the purpose of the case that the second defendant was a minor, and he proceeds, " I think that a donation by a parent to his minor child is deemed to be valid because possession by the parent after the date of the donation is considered to be possession on behalf of the child. But when a life-interest is reserved it cannot be said that the possession by the parent is possession on behalf of the child. The parent continues to posses in his own right and not by virtue of any right in the child. There is no change of status in the possession of the land." Further, the deed itself is quite clear on the point. It says " They are to possess and enjoy the same after our death . . . . " The learned District Judge followed the decision in the case of *Meydeen v. Aboobucker*,[2] and held that the deed was invalid, and entered judgment for the plaintiff as prayed for with costs.

A learned argument has been addressed to us for the purpose of showing that this decision is incorrect. But for the reasons set forth I think the cases quoted by the learned District Judge govern the point conclusively. Whatever the presumption may be on the wording of other deeds as to the delivery of possession to minor children, it seems to me that the wording of this deed makes it perfectly clear that there was no intention on the part of the parents to divest themselves of the possession of the land. The case is even stronger because the parents have reserved the right and power to mortgage or transfer the land, that is to say, the conditions under which the gift is granted are such as to reserve practically all the control over the land to the donors. It was argued that the conditions derogating from the grant ought to be ignored and the gift should take effect without reference to them. I do not think that this is a deed which is open to such a method of construction. The words of conveyance themselves subject the conveyance to the conditions, and the conditions follow immediately. This is quite a different case from that of a deed which makes a free grant and at a later stage proceeds to attach limitations and conditions to the grant.

I would dismiss the appeal with costs.

MAARTENSZ A.J.—I agree.

Appeal dismissed.

[1] *28 N. L. R. 136.*

[2] *21 N. L. R. 284.*