Present: Lascelles C.J. and De Sampayo A.J. 1914.

DINGIRI BANDA *v.* MEDDUMA BANDA *et al.*

25—D. C. Kandy, 22,204.

Kandyan law—Gift to daughter's son—Acquired property of grandson—Succession to grandson's property—Gift of husband's property by husband and wife—May wife revoke the gift after husband's death ?

Ukkurala and Mutumenika had a daughter Kirimenika (died 1868), who was married in *bina* to plaintiff. Ukkurala gifted in 1888, along with Mutumenika, his land to his grandson Tikiri Banda, subject to the condition that he should render assistance, &c., to Ukkurala and Mutumenika. Tikiri Banda died leaving a son, Ran Banda, who died issueless in 1906. Mutumenika in 1907 (her husband being then dead) purported to gift the land to her brothers.

Held, (1) That Mutumenika's deed in favour of her brothers did not convey any title to them, as the land belonged to Ukkurala and not to Mutumenika.

(2) That on Ran Banda's death the property devolved on his paternal grandfather (Kirimenika's husband).

In the hands of Tikiri Banda himself the property was acquired, and not *paraveni* or ancestral property.

APPEAL from a judgment of the District Judge of Kandy (P. E. Pieris, Esq.).

Bawa, K.C., for the appellant.—The gift to Tikiri Banda was on condition that he should render assistance to the donors. He predeceased the donors and could not have rendered any assistance to the donors. It was open to the surviving donor (Mutumenika) to revoke the gift and give it to others.

[De Sampayo A.J.—The property donated was not the property of Mutumenika, but it was the property of Ukkurala.] In any event Mutumenika had a right to revoke the gift to the extent of

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one-half. Ukkurala, by associating his wife in the deed of gift, gave his wife as it were a disposing power over one-half of the property gifted.

Plaintiff, who is Ukkurala's son-in-law, is not entitled to succeed to his grandson's property. The property in question is the ancestral property of Ukkurala, which devolved on Tikiri Banda by gift.

On Tikiri Banda's only son dying issueless, it should revert to the source from which the property devolved on Tikiri Banda. Plaintiff, who was Ukkurala's daughter's *bina* married husband, cannot inherit the ancestral property from his grandson. A *bina* father is not heir to his children in respect of property inherited by them from their mother (*Ran Menika v. Mudalihamy* [1]). Counsel also referred to *Ranhamy v. Pinghamy* [2]; *Modder's Kandyan Law 189, 165*; *Appuhamy v. Dingiri Menika* [3].

It has been proved that the plaintiff had abandoned his son Tikiri Banda after the death of his wife. Tikiri Banda was brought up and was entirely supported by his maternal grandparents; under the circumstances, the plaintiff would in no event have succeeded to the property of his son Tikiri Banda or of his son Ran Banda.

A. St. V. Jayewardene, for the plaintiff, respondent.—By the deed of gift in favour of Tikiri Banda life interest was reserved in favour of Ukkurala and Mutumenika. In the ordinary Kandyan deed of gift possession is also transferred. In this case Tikiri Banda rendered such services as he could during his lifetime. If a gift is given in consideration of future services, and such services are rendered, it could not thereafter be revoked. The fact that Mutumenika died before the donors does not give the donors any right to revoke the gift.

Mutumenika had no right to revoke the gift. Ukkurala did not give that power to his wife. The property gifted was Ukkurala's.

Mutumenika has not in any event revoked the gift in favour of Tikiri Banda.

The property in question was the acquired property of Tikiri Banda. A *bina* husband succeeds to all the property of his children, except property which comes through the mother. *Ukkurala v. Tillekeratna*,[4] *Mudalihamy v. Bandirala*,[5] *Modder 114*, *Ran Menika v. Banda Lekam*,[6] *Sawyer 14*.

Bawa, K.C., in reply.—Though Tikiri Banda did not inherit the property from his mother, it is stamped with the character of maternal property. Kandyan deeds, with a few exceptions, are revokable. The death of the donee does not take away the right.

[1] *(1913) 16 N. L. R. 131.*
[2] *(1878) 1 S. C. C. 3.*
[3] *(1889) 9 S. C. C. 34.*
[4] *(1882) 5 S. C. C. 46.*
[5] *(1898) 3 N. L. R. 210.*
[6] *(1912) 15 N.L.R. 407, at page 410.*

No express revocation is necessary. A later donation is sufficient revocation of an earlier gift; the first deed is *ipso facto* revoked by the later deed, although it does not expressly purport to revoke it (*Teldena v. Teldena*[1]). Counsel also referred to *Mudiyanse v. Banda.*[2]

Cur. adv. vult.

March 25, 1914. DE SAMPAYO A.J.—

This apeal raises a difficult and, so far as I know, new point in the Kandyan law under the following circumstances. Ukkurala and his wife Mutumenika had a daughter Kirimenika, who was married to the plaintiff in *bina*. Kirimenika died in 1868 after giving birth to a son, Tikiri Banda. Ukkurala and Mutumenika on August 2, 1888, gave a deed of gift to their grandson Tikiri Banda in respect of the land Pelakettiyakumbura in claim and various other lands, reserving to themselves the right of possession during their lives, and providing that the donee should render them assistance, and, when they died, should bury them according to custom, and perform religious ceremonies for the benefit of their future state. Tikiri Banda lived with the grandparents and rendered them assistance until he fell ill and died some years ago. He left a son, Ran Banda, who himself died in his youth in 1906. Mutumenika on November 25, 1907, her husband Ukkurala having in the meantime died, purported to gift the same lands over again to the defendants, who are her brothers. Mutumenika has also since died, and the plaintiff, claiming as the only heir of his grandson Ran Banda, has brought this action to vindicate the land Pelakettiyakumbura. The questions arising out of these circumstances are (1) whether Mutumenika's deed of gift of 1907 in favour of the defendants had the effect of revoking the original deed of gift of 1888 in favour of Tikiri Banda; and (2) if not, whether the plaintiff is the heir of his grandson Ran Banda?

There is no express revocation in Mutumenika's deed of 1907, but if Mutumenika had the right to revoke, the subsequent gift to the defendants would no doubt itself have the effect, under the Kandyan law, of revoking the prior gift. I shall also assume for the purposes of this case that a gift for assistance may be revoked after the death of the donee, even though he has during his life fulfilled the condition by rendering assistance. But Mutumenika was not at all events the sole donor. As a matter of fact, the District Judge finds that the lands belonged to Ukkurala alone, and not to Mutumenika at all. That being so, the District Judge has held that Ukkurala was the real donor, and that Mutumenika alone could not after his death revoke the gift, and I agree with him in that opinion. With reference to this, Mr. Bawa, for the defendants, maintained a curious argument, in order to save the situation as much as possible. He contended that Ukkurala, by making his wife Mutumenika join

[1] (*1903*) *3 Bal. 133.*

[2] (*1912*) *16 N. L. R. 53.*

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in the deed, in effect gifted to her a half share of the lands, and that Mutumenika must be regarded as having by the same deed given to Tikiri Banda that half share by way of gift, which she therefore could revoke at pleasure. This argument is more specious than sound, and is wholly untenable. There is no law by which in such circumstances as the above one conveying party can be regarded as giving anything to the other conveying party. There are no doubt cases of estoppel arising from the fact of the true owner of property standing by and allowing another person to deal with the property as if it were his own, whereby the true owner would be precluded from asserting title as against an innocent party who pays valuable consideration, but this is not a case of that kind at all. Nor are the facts in accordance with the argument. On the face of the deed Ukkurala not only recited his own title, but expressed himself in a way which shows that he really was the sole donor. This is clearer in the Sinhalese original than in the translation filed in the case. It is Ukkurala who speaks all throughout in the deed. He begins by saying (I am here abbreviating the wording), "I Ukkurala, am entitled by right of my father Punchirala to the following lands." The lands being then described, he proceeds: "The said lands having been hereby gifted by me and my wife Mutumenika to our grandson Tikiri Banda, all my right, title, and interest in the said lands, and therefore the said Tikiri Banda shall render assistance, &c., so long as I and my said wife shall live, and after our death he shall possess the same according to pleasure." The deed concludes by the usual clause relating to execution, and is signed by Ukkurala and Mutumenika. In my view the only conveying party in the above deed is Ukkurala himself, though in one passage Mutumenika's name is associated with his own, so that the argument in question has no foundation of fact; probably Mutumenika joined in the deed from some idea on the part of the notary or the grantors that her life interest and the right to assistance would thereby be better secured. In this connection I may refer to *Doratiyawa Banda v. Hewapola Appuhamy* (D. C. Kurunegala, 16,788, decided in appeal on November 26, 1867), a note of which is given in *Modder's Kandyan Law 136*. There also two persons, husband and wife, had given one deed of gift for several lands to the plaintiff, and after the death of the husband the wife purported to gift the lands to the defendants, who appear to have justified the latter gift on the ground, *inter alia*, that the wife was the sole owner. If I understand the note of the case, the District Judge declared the plaintiff entitled to the lands of which the husband was owner, and the defendants to the lands of which the wife was owner, and the Supreme Court affirmed the District Judge's judgment. In my opinion the original gift to Tikiri Banda remains unaffected by the subsequent deed executed by Mutumenika in favour of the defendants.

The question as to the plaintiff being the heir of Ran Banda in respect of the lands gifted to Tikiri Banda and inherited from him by Ran Banda is a more serious one. There is no express rule in the Kandyan law depriving the paternal grandfather of the natural right of succession in such circumstances as the above, and it is difficult to discover a principle by which the Court should so hold with any degree of certainty. Counsel for the defendants referred us to the class of cases, the latest of which, *Ran Menika v. Mudalihamy*,[1] collects all the authorities, in which it has been held that according to Kandyan law a *bina* father is not the heir to his children in respect of property inherited by them from their mother, and that the property goes to the relatives on the mother's side. These cases, however, have no application to the present case, if only for the reason that this was not the mother's property. Then counsel referred to the more general principle, which was enunciated in *Ranhamy v. Pinghamy*,[2] that ancestral property, when the line of descent is broken, goes over to the next nearest line issuing from the common ancestral rooftree. The principle may be absolutely accepted so far as it goes. But it is to be observed that the rule has been applied in cases where the question is as between the maternal relatives and the paternal relatives, and I am not aware of any case in which the rule has been requisitioned where the contest is between the father and the maternal relatives. It seems to me that all these cases pre-suppose the father to have pre-deceased the child, and, indeed, Mr. Modder, in his book on Kandyan law, at page 189, after stating the rule "*paraveni* property reverts to the source whence it came," proceeds to explain it thus: "*If a person survived his or her parents*" and died without issue or certain specified relatives, "in that case the deceased's paternal *paraveni* lands will pass to his or her next of kin on the father's side, and the lands which the deceased had derived from his or her maternal ancestors will devolve on the next of kin on the mother's side." The words italicized make the matter clear in the sense I have above indicated. Moreover, the quality of the property itself is of essential importance, for it is *paraveni* or ancestral property which so reverts to the original source, and by that expression is meant property inherited from the ancestor and not property acquired, though it may be from an ancestor. Now, in this case Tikiri Banda obtained the lands by gift from his grandfather Ukkurala, and there is good authority for saying that such property is "acquired" property as opposed to "*paraveni*" property. See *Ukkurala v. Tillekeratne*,[3] *Mudalihamy v. Bandirala*,[4] *Kiri Menika v. Mutumenika*.[5] No doubt, as pointed out by Lawrie J. in the last of these cases, "*paraveni*" in one sense means property over which the owner

[1] *(1913) 16 N. L. R. 131.*
[2] *(1878) 1 S. C. C. 3.*
[3] *(1882) 5 S. C. C. 46.*
[4] *(1898) 3 N. L. R. 210.*
[5] *(1899) 3 N. L. R. 376.*

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has disposing power, but in the present discussion "*paraveni*" is synonymous with "ancestral," that is to say, property coming by descent from an ancestor. It is also true that Ran Banda, whose estate is now in question, inherited the lands from his father Tikiri Banda, but in the hands of Tikiri Banda himself they were acquired, and not *paraveni* or ancestral property. For the purposes of this case Tikiri Banda, and not his donor Ukkurala, was the source of Ran Banda's title, and therefore there is no room for the application of the rule in question, or for the conclusion that the property reverted to Ukkurala's or his wife Mutumenika's relatives. There being no other rule or principle to exclude the plaintiff from the succession to his grandson Ran Banda's property, I think the natural and general rule that in default of issue or collateral relatives entitled to succeed the property of a deceased person should go to his nearest ascendant, should prevail.

In my opinion the appeal fails, and should be dismissed with costs. I may add that, since the above judgment was prepared, I had the record in D. C. Kurunegala, 16,788, referred to above sent for, and I find that the facts are as I gathered them from Mr. Modder's book on Kandyan law at page 136.

LASCELLES C.J.—

I entirely agree.

Appeal dismissed.