1919.

Present: Ennis A.C.J. and De Sampayo J.

MEYDEEN *v.* ABUBAKER *et al.*

216—D. C. Jaffna, 13,025.

Muhammadan law—Deed of gift—Interpretation—Gift subject to a reservation—Possession by donor.

The second and third defendants, Muhammadans, executed a deed conveying to the plaintiff certain lands by way of donation, saying, "as we reserve for ourselves a life interest over the said lands and their appurtenances hereby donated, we do declare that he shall after our lifetime possess the same as his own property."

"*Held*, that the deed was inoperative as a gift under the Muhammadan law.

ENNIS A.C.J.—"The reservation in this case does not appear to be a condition of the gift, but rather to indicate the intention of the donor in making the gift, and, therefore, there has been no change of status in the possession of the land. The character of the donor's possession did not change. They possessed as owners and not under the donee."

THE facts appear from the judgment.

A. St. V. Jayewardene (with him *Tisseverasinghe*), for appellant.—Delivery of deed is not essential to pass title. Execution of the document as required by Ordinance No. 7 of 1840 takes the place of delivery in Muhammadan law. Donation is not vitiated by the enjoyment of the income by the donor. Muhammadan law relating to donation does not apply in Ceylon. (*Gren., pt. 3, p. 28.*) The Muhammadan law of land tenure was never introduced into Ceylon. If Muhammadan law applies, property under usufructuary mortgage cannot be gifted. In a donation with a condition, the donation will be good and the condition void. *Tyabji on Muhammadan Law, p. 259.* Thus, life interest cannot be reserved, and this becomes an absolute gift. Further, the donee was in possession, and had paid the taxes. At the time of the execution of the deed, if donor and donee are in possession, delivery of possession will be presumed. *Humera Bibi v. Najm-un-nissa.*[1]

Bawa, K.C. (with him *Arulanandan*), for the respondents, cited *Jainabai v. Sethana.*[2]

November 11, 1919. ENNIS A.C.J.—

In this case the second and third defendants executed a deed conveying to the plaintiff certain lands by way of donation, saying, "as we reserve for ourselves a life interest over the said lands and

[1] *(1905) I. L. R. 28. All, 147.* [2] *(1910) 34 Bom. 604.*

their appurtenances hereby donated, we do declare that he shall after our lifetime possess the same as his own property." This deed is dated February 4, 1908, and is numbered 4,793. It was accepted by the plaintiff, but the deed itself has been produced by the defendants. On October 29, 1917, by deed No. 5,884, the second and third defendants purported to sell to the first defendant for a sum of Rs. 1,000 the land in dispute in the present case. The learned Judge held that the deed No. 4,793 was inoperative as a gift under Muhammadan law. It has been urged on appeal that the Muhammadan law of donation does not apply in Ceylon, and, in view of the case of *Affefudeen v. Periatamby*, [1] it was suggested that this matter might be referred to a Full Court. That case decided that donations between Muhammadans were regulated by the Muhammadan Law, and for this proposition the case D. C. Colombo, No. 12,129 (*Vanderstraaten, Appendix B, p. 31*), was relied upon. In addition to this case, we have been referred to a later case in the same set of reports at page 175. These two cases appear to have been heard before a Bench of three Judges. It is too late now to go into the question as to whether the Muhammadan law of donation applies in Ceylon. It would seem merely to open a field for speculation as to the existence in Ceylon of Muhammadan law prior to the Dutch occupation of Ceylon. I would, therefore, accept the ruling accepted in *Affefudeen v. Periatamby*,[1] that donations between Muhammadans are regulated by Muhammadan law. That being so, we have to consider in this case whether the document No. 4,793 is an effective donation in Muhammadan law. Under Muhammadan law apparently three things were necessary to an effective donation: an intention to give, an acceptance by the donee, and a seisin of the property by the donee. These matters are dealt with in Amir Ali at pages 40 and 95. In the present case the deed itself shows that there was no intention to make an absolute gift. It expressly says that the donee is not to possess the property until after the death of the donors, so that no question of seisin, constructive or otherwise, can arise under this deed, as the deed itself in its terms does not give the property absolutely. The Muhammadan law requires that there should be a clear intention to give the property absolutely. The reservation in this case does not appear to be a condition of the gift, but rather to indicate the intention of the donor in making the gift, and, therefore, there has been no change of status in the possession of the land. The character of the donors' possession did not change. They possessed as owners, and not under the donee. In the circumstances, the decree of the learned Judge is, in my opinion, right, and I would dismiss the appeal, with costs.

DE SAMPAYO J.—I agree.

Appeal dismissed.

[1] *(1911) 14 N. L. R. 295*