

1965

Present : Tambiah, J., and Abeyesundere, J.

R. B. TAMMITTA, Appellant, and C. B. PALIPANE,
Respondent

S. C. 681/64—D. C. Kandy, 7277/L

Kandyan law—Donation—Revocability—“ Voluntary transfer ”—Kandyan Law Declaration and Amendment Ordinance (Cap. 59), ss. 2, 5 (1).

A Kandyan deed of gift executed after the Kandyan Law Declaration and Amendment Ordinance came into operation is irrevocable if the donor has expressly renounced his right to revoke and, although an undertaking was given by the donee to give succour and assistance to the donor during the donor's life-time, the undertaking was not one of the conditions on which the grant was made to the donee by the donor.

APPEAL from a judgment of the District Court, Kandy.

C. D. S. Siriwardena, for the defendant-appellant.

W. D. Gunasekera, for the plaintiff-respondent.

Cur. adv. vult.

December 15, 1965. TAMBIAH, J.—

This is an action by the plaintiff-respondent against the defendant-appellant for a declaration of title and ejectment brought in respect of the thirteen lands described in the schedule to the plaint. The plaintiff-respondent based his title to the said lands on two deeds of gift marked P1 and P2 from one G. E. W. Palipane, and the defendant-appellant claimed the same lands on deed D2 from the same source. It is common ground that these deeds of donations are governed by the Kandyan Law.

The learned District Judge has held that the deeds P1 and P2 are irrevocable and therefore Palipane could not have executed the deed D2 in favour of the defendant, and gave judgment for the plaintiff. The defendant-appellant has appealed from this order.

The terms of P1 and P2 are almost the same and it is sufficient therefore to give the relevant portions of the deed P1, deed No. 286 of 1/11/54 which gifted the properties “ absolutely ” “ in consideration of the love and affection ” which the donor had towards his nephew, the plaintiff. The recital of the gift shows that the gift was also made for “ diverse other good reasons and considerations ” specifically moving the donor. The habendum clause is as follows :

“ To have and to hold the said lands and premises hereby gifted unto the said Donee and his heirs executors administrators and assigns absolutely for ever.”

The deed, after stating that the donor “ expressly renounces his right to revoke ”, contains a clause whereby the donee “ thankfully accepts the said Gift and undertakes to render all succour and assistance to the Donor during his life-time ”.

Mr. Siriwardena, who appeared for the defendant-appellant, contended that although the deeds P1 and P2 were executed after the Kandyan Law Declaration and Amendment Ordinance came into operation, yet it does not come within the purview of its operation. He submitted that the deeds P1 and P2 are not voluntary deeds of donation and therefore section 5 (1) of the Kandyan Law Declaration and Amendment Ordinance has no application. Section 2 of the Kandyan Law Declaration and Amendment Ordinance defines the word “ gift ” as follows :

“ Gift ” means a voluntary transfer, assignment, grant, conveyance, settlement, or other disposition *inter vivos* of immovable property, made otherwise than for consideration in money or money’s worth.

The appellant’s counsel contended that since there is an undertaking to give succour and assistance by the donee the deeds P1 and P2 are not voluntary gifts and therefore the law applicable to donations is the Kandyan Law before it was altered by the Kandyan Law Declaration and Amendment Ordinance.

A careful perusal of the deeds P1 and P2 does not support the contention of the appellant. Although the donee has given an undertaking to give succour and assistance it is not one of the conditions on which the grant was made to the donee by the donor. Therefore I am of the view that the Kandyan Law Declaration and Amendment Ordinance applies to the deeds P1 and P2. It was conceded by counsel for the appellant that if the Kandyan Law Declaration and Amendment Ordinance applies, the deeds P1 and P2 are irrevocable and the plaintiff has title.

Even if the Kandyan Law Declaration and Amendment Act does not apply to deeds P1 and P2 I am of the view that under the general principles of Kandyan Law the deeds P1 and P2 are irrevocable. In *Kirihenaya v. Jotiya*¹ it was held that a Kandyan deed of gift in which the donor expressly renounces the right of revocation and which is not dependent on any contingency, is irrevocable. The principle underlying this decision is that a deed of gift is a contract and there is no rule of law which makes it illegal for any one of the parties to the contract to expressly renounce the right the law would otherwise give him. Subsequent to the decision in *Kirihenaya v. Jotiya*, as stated in the Report of the Kandyan Law Commission, the courts appear to have given recognition to the general proposition that a Kandyan donor can, irrespective of whether a gift was dependent on any contingency or not, render the gift irrevocable by an express renunciation of the right to revoke (*vide* The

¹ (1922) 24 N. L. R. 149.

Report of the Kandyan Law Commission, Sessional Paper XXIV, 1923 paragraph 56). This view has been followed in subsequent cases (vide *Kumarasamy v. Banda* ¹ and *H. M. Ukku Amma v. A. M. Dingiri Menika and others* ²). The words used in the deeds P1 and P2 make it clear that the donor had renounced his rights of revocation and therefore the defendant did not get title to the lands which are the subject matter of this action.

For these reasons I affirm the judgment of the learned District Judge and dismiss the appeal with costs in both courts.

ABEYESUNDERE, J.—I. agree.

Appeal dismissed.

