

1951

Present : **Basnayake J. and Gunasekara J.**

MOHAMED CASSIM, Appellant, and ABDUL JABBAR *et al.*,  
Respondents

*S. C. 115—D. C. Kandy, 1,556*

*Muslim Law—Conditional gift—Validity.*

Where a Muslim made a gift of certain premises to another Muslim subject to the condition that the donee should render all necessary assistance and succour to the donor so long as the latter lived and that after the donor's death the property should continue to remain in the donee and his heirs, executors, administrators and assigns—

*Held*, that there was a valid conditional gift. In Muslim Law contingent gifts are void but conditional gifts are good.

**A**PPEAL from a judgment of the District Court, Kandy.

*H. V. Perera, K.C.*, with *M. I. M. Haniffa* and *T. B. Dissanayake*, for the plaintiff appellant.

*H. W. Tambiah*, with *P. Somatilakam* and *S. Sharavananda*, for the defendant respondent.

*Cur. adv. vult.*

October 10, 1951. BASNAYAKE J.—

The appeal in this case came up for hearing on the 19th of September, 1947, before Justices Canekeratne and Windham. It was decreed that:

“ If the defendant pays the costs of the contest in the court below and costs of appeal within a period of one month after the bill has been taxed by the plaintiff, the defendant will have the right to put forward the case on this point—that deed D1 is governed by the Roman Dutch Law. It will not be open to the respondent to set up any other defence. The plaintiff will be at liberty to contend that the deed is governed by Muslim Law or otherwise, as the case may be. If the costs are not paid or if the defendant fails in his contention that the deed is governed by the general law judgment will be entered for the plaintiff as prayed for. ”

The costs were paid on 14th June, 1949, and when the matter came up for hearing the following issues suggested by counsel for the defendant were agreed on—

- (1) Is deed No. 31390 of the 9th December, 1924, marked D1, governed by the Roman Dutch Law?
- (2) If so, does any title pass to the plaintiff upon the title pleaded by him?
- (3) Damages? Agreed on at Rs. 10 per month as from 23rd October, 1944.

No evidence was led by either side but the arguments of counsel were heard. Thereafter the learned District Judge delivered judgment dismissing the plaintiff's action with costs and holding that the deed D1 was governed by the Roman Dutch Law. The present appeal is from that decision.

I shall first consider the material paragraphs of the deed the original of which is in Sinhalese. There are two translations of the deed. I shall quote from D1 which reads:

“ . . . . in consideration of the love and affection which I bear to my dear son Ismail Lebbe's son Abdul Jabbar . . . . and with the object of receiving from him all assistance and succour I may be in need of do hereby donate grant convey and assign by way of gift with my good will and pleasure unto the said Ismail Lebbe's son Abdul Jabbar the premises described below . . . .

“ Therefore so long as I the said Uduma Lebbe's daughter Mariam Beebee live in this world, the said Ismail Lebbe's son Abdul Jabbar shall render me all necessary assistance and succour. And after my death the aforesaid premises shall devolve on the said Ismail Lebbe's son Abdul Jabbar his heirs executors administrators and assigns, unto whom I do hereby assign the sole authority to hold and possess the same for ever free of dispute or to deal with the same at will and pleasure. ”

It is contended that this is a gift to take place upon death and as such is invalid according to Muslim Law but valid according to Roman Dutch Law. Counsel for the respondent laid great emphasis on the word “ devolve ” in the context “ the aforesaid premises shall devolve on the said Ismail Lebbe's son Abdul Jabbar ”. He argued that the word suggests that the donor retained the property for herself during her lifetime and stipulated that it should pass only on her death.

Neither of the translations put forward reproduces faithfully the intention of the donor as indicated in the original deed which is in Sinhalese. With the consent of counsel we examined the original Sinhalese deed. The material portion of that deed is as follows:—

මගේ ප්‍රිය පුත්‍රයා වන ඉහත කී මධ්‍යම දිශාවේ මහනුවර දිස්ත්‍රික්කේ සාරසිය පත්තුවේ, උඩගම පහේ, අලියාවැටුනුතැන්නේ පදිංචි ඉස්මායිල් ලෙබ්බේගේ පුත් අබ්දුල් ජබාර් කෙරෙහි මා සිත්හි පැවති ප්‍රේමාදරය නිසා සහ ඔහුගෙන් මට උවමනා සියලුම උප සංග්‍රහ ලබාගැනීම පිණිසත්, එකී ඉස්මායිල් ලෙබ්බේගේ පුත් අබ්දුල් ජබාර්ට මගේ හොඳ හිතින් සහ සිය කැමැත්තෙනුත් මෙයින් තැහි වශයෙන් අයිතිකර, හිමිකර, පවරා භාරදෙමි.

එබැවින් ඉහත කී උදුමා ලෙබ්බේගේ දූ මරියම් බිබි වන මම මෙලොව ජීවත්ව වසනාතාක් ඉහත කී ඉස්මායිල් ලෙබ්බේගේ පුත් අබ්දුල් ජබාර් විසින් මට කටයුතු සියලුම උප සංග්‍රහ කරමින් මගේ මරණින් පසු ඉහත සඳහන්වූ දේපල ඉහත කී ඉස්මායිල් ලෙබ්බේගේ පුත් අබ්දුල් ජබාර්ට සහ ඔහුගේ උරුමක්කාර, බලකාර, බුදල් භාරකාර, අද්මිණිස්ත්‍රාර්කාර ලැබුම් කාරයින්ටත්, අයිතිව සදකාලයටම නිරවුල්ව බුක්ති විදිත්ට සහ ඕනෑ මනාපයක් කරගන්ටත් පුලුවන් සම්පූර්ණ බලය මෙයින් සලස්වා දුනිමි.

It is clear from the language of the deed that the word “ devolve ” in D1 has no corresponding expression in the deed. What the donor provides is that after her death the property should continue to remain in Abdul Jabbar and his heirs executors administrators and assigns.

A deed of gift in this form is familiar to Kandyan Law in which system it is called a deed of assistance. It is admitted that the donor and donee are Muslims governed by the Muslim Law. According to that law contingent gifts are void but conditional gifts are good. Ameer Ali states the following proposition at page 85 of Volume 1 of his work on Mahommedan Law:

“ If a person make a gift of land to another on condition that the donee should give to the donor the produce of such land for his support, according to Abu'l Kasim, if the land is capable of bearing produce, the gift is good and the condition void. But if the land is waste or unculturable, the gift is bad. Under the Shiah Law both the gift and the condition would be valid. ”

One of the illustrations of a conditional gift given by Ameer Ali (Mahommedan Law, Vol. 1, p. 78, 3rd Edn.) is as follows:—

“ A gift by A to B of a certain property without any restriction on the power of disposition, but subject to the condition that B should pay periodically to A, or A and his heirs, a part of the usufruct of the property. In such a case both the gift and the condition would be valid. ”

The gift in the instant case is a valid conditional gift. The appellant is therefore entitled to judgment as prayed for in terms of the decree of the Supreme Court dated the 19th day of September, 1947.

We accordingly allow the appeal with costs both here and below.

GUNASEKARA J.—I agree.

*Appeal allowed.*

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