1956 *Present :* Sinnetamby, J., and L. W. de Silva, A.J.

PODIMENIKE KUMARIHAMY, Appellant, *and* ABEYKOON BANDA, Respondent

S. C. 408—D. C., Kegalle, 8,661

Kandyan Law—Donation—Services to be rendered by donee—Revocability of gift.

In a Kandyan deed of gift executed in 1929 by a father in favour of his daughter in consideration of services already rendered, the donor enjoined on the donee the performance of future services not merely during his life time but also after his death. In 1931 the donor revoked the gift. The donee rendered services to the donor continuously till a few weeks before the donor's death in 1940.

Held, that the revocation of the gift was valid, firstly, inasmuch as there were further services to be rendered by the donee, and it was thus solely within the discretion of the donor to revoke his gift. Secondly, there was nothing whatever on the face of the deed to make it exceptional to the general rule of revocability.

APPEAL from a judgment of the District Court, Kegalle.

H. W. Jayewardene, Q.C., with *T. B. Dissanayake* and *P. Ranasinghe*, for the 2nd defendant-appellant.

C. T. Olegasegarem, for the plaintiff-respondent.

Cur. adv. vult.

October 10, 1956. L. W. de SILVA, A.J.—

This appeal is concerned with the revocability of a Kandyan deed of gift which is not affected by the Kandyan Law Declaration and Amendment Ordinance No. 39 of 1938. The immovable property, to which the plaintiff-respondent has sought a declaration of title, was purchased by Kalukohowattegedera Loku Banda in 1897 on the deed P1. He gifted the property to his eldest daughter Heenmenike on the deed 49512 of 1929 (P2), and thereafter in 1931 revoked the gift by granting the deed 7600 (2D3) in favour of his younger daughter the appellant's husband. The donor remained in possession of the property till his death in 1940. Thirteen years after the revocation, the donee Heenmenike conveyed the property on P4 of 1944 to the plaintiff-respondent who instituted this action in 1953.

The donation P2 is in the following terms :—

"I . . . in consideration of the care and help rendered to me for a long time up to now and with the object of obtaining her continued care and help in the future have hereby agreed with my eldest daughter Heenmenike Kumarihamy to gift and donate unto her the premises described in the schedule hereto annexed . . . .

Therefore the said donee shall render to me Loku Banda the donor every care and help during my lifetime, bury my remains with respect after my death, and perform all religious rites as ordained by our Buddhist religion for the repose of my soul, thereafter the said donee and her heirs, executors, administrators, assigns, shall have and hold the said lands and premises for ever or do what they like therewith ".

The sentence " and perform all religious rites as ordained by our Buddhist religion for the repose of my soul " is a mistranslation (though not material for our decision) of the Sinhalese for " and perform all such Buddhist customary rites and ceremonies as are observed in memory of the dead ".

The first defendant, who is the second respondent to this appeal, claimed no interest in the property. The appellant claimed only a life interest since the land in issue is property acquired by her deceased

husband. The learned District Judge entered judgment for the plaintiff-respondent. The basis for his conclusion is that, according to the oral evidence, Heenmenike had looked after her father Loku Banda and rendered him selfless and invaluable services over a long period of years till a few weeks before his death, and the father had every reason to be grateful to his daughter. The learned Judge purported to follow the decision in *Hapumali v. Ukkua* [1]. In that Court of Requests case, Howard, C.J., held that the motive for the gift was the implied promise on the part of the defendant to render the plaintiff assistance and necessary succour during her lifetime, and the Commissioner's finding of fact that such services were actually rendered was not disturbed.

Learned Counsel for the respondent sought to support the judgment of the District Court for the reasons stated in *Hapumali v. Ukkua* [1], which, we respectfully venture to state, does not lay down a principle of Kandyan Law. Whatever may be said in support of the decision in *Hapumali v. Ukkua* [1], the facts in that case are clearly distinguishable. There, all the services had been performed. Here, according to the terms of the gift P2, the donor Loku Banda enjoined on his daughter the performance of services not merely during his life time but also after his death. The general rule, therefore, as stated in *Bologna v. Punchi Mahatmeya* [2] applies :—

> "The Supreme Court thinks it clear that the general rule is that such deeds are revocable, and also that before a particular deed is held to be exceptional to this rule, it should be shewn that the circumstances which constitute non-revocability appear most clearly on the face of the deed itself. The words in the present deed as to services 'continued to be rendered by the donee' do not appear to the Supreme Court to be sufficiently clear and strong."

A donation very similar in terms to P2 was considered in *Wijeysinghe v. Moholly* [3] by Wijeyewardene J. who followed the rule enunciated in *Bologna v. Punchi Mahatmeya* [2] and held that the questioned deed was revocable because, although the donees had performed up to date for a period of twenty years the services agreed upon, there were further services to be performed by them in the future. The revocation even after such a long lapse of time was not a matter that was taken into account since notions of natural equity cannot override the Kandyan law on the subject.

On a consideration of all the decisions and references contained therein cited to us at the argument, we are of the opinion that the gift P2 was revocable, firstly, in as much as there were further services to be rendered by the donee, and it was thus solely within the discretion of the donor to revoke his gift. Secondly, there is nothing whatever on the face of the deed to make it exceptional to the general rule. The learned District Judge has overlooked these two decisive factors while giving undue weight to the value of services already rendered to an ungrateful father.

[1] *(1944) 45 N. L. R. 346.*
[2] *(1863-68) Ramanathan's Reports 195.*
[3] *(1943) 44 N. L. R. 549.*

The conclusion we have reached is also supported by the decision of the Collective Court in *Punchiralle and Appuhamy v. Punchiralle Gan Aratchille*[1], where the deed of gift was also for services already rendered and services to be rendered. The judgment of 1857 of the Collective Court (also appearing in Austin's Reports[2] without a recital of the facts) is as follows :—

> "The Supreme Court feels itself bound to follow former decisions which establish the doctrine that deeds as well for services previously rendered as for those to be rendered in future are by the Kandyan law revocable.''

We set aside the judgment and decree of the learned District Judge and declare the appellant entitled to a life interest in the property in suit with costs here and in the court below.

SINNETAMBY, J.—I agree.

Appeal allowed.