1959 *Present :* **Gunasekara, J., and Sansoni, J.**

S. KIRIHAMY *et al.*, Appellants, *and* SADI KUMARIHAMY, Respondent

S. C. 843—D. C. Kandy, 4661/P

Kandyan Law—Donation—"Dowry" given by father to daughter subsequent to latter's marriage—Revocability.

Under Kandyan Law, if a parent donates immovable property to his daughter some time after the latter's marriage, the deed of gift is revocable if there is no evidence that it was given in pursuance of a promise made before the marriage. In such a case, the mere fact that the deed states that it is given "for and in consideration of the marriage" and "by way of dowry" can make no difference.

APPEAL from a judgment of the District Court, Kandy.

T. B. Dissanayake, for 1st to 7th and 10th Defendants-Appellant.

N. E. Weerasooria, Q.C., with *B. S. C. Ratwatte*, for Plaintiff-Respondent.

Cur. adv. vult.

April 7, 1959. GUNASEKARA, J.—

This is an appeal from a decree for partition in an action instituted under the Partition Act, No. 16 of 1951. The subject of the decree is a piece of land known as Kahatagahagodawatta, 7 acres and 29 perches in extent, depicted as lots 1 to 7 in a plan (marked X) that was made for the purpose of the action.

It appears that Kahatagahagodawatta was sold and transferred by the Crown on the 18th May 1863 to a person named Kirihamy and that his title eventually devolved on the 1st defendant on the 29th November 1901. The property is described in the Crown grant and in later deeds as being 6 acres 2 roods and 26 perches in extent and is so described in the schedule to the plaint. On the 25th February 1928 Kirihamy sold and transferred to Tikiri Banda Nugawela, by the deed P9, a defined extent of 2 acres 2 roods and 25 perches out of this property. According to the case for the plaintiff the portion so transferred is represented by lot 7 in the plan X, though that lot is only 2 acres, 1 rood and 11 perches in extent. On the 19th December 1932, by the deed P1, the 1st defendant conveyed to his daughter Punchi Etana "an undivided two acres in extent towards the West", and the plaintiff claims that she has succeeded to Punchi Etana's title and that this interest has accordingly devolved on her. On the 7th September 1934, by the deed 1 D13, the 1st defendant conveyed the rest of the property to the children of his daughter Ukku Etana

(the 2nd defendant) subject to a life-interest in her favour. Subsequently, in 1944, an extent of 3 roods was compulsorily acquired by the Crown for a public cemetery. According to the case for the plaintiff the portion so acquired is that depicted as lot 6 in the plan X, the extent of which however is 3 roods and 14 perches.

The learned district judge has made order allotting lot 6 to the Crown and lot 7 to the 8th to 14th defendants as the heirs of Tikiri Banda Nugawela, and declaring the plaintiff to be entitled to an "undivided extent of 2 acres from the west out of lots 1, 2, 3, 4 and 5" and the 3rd to 7th defendants (who are the children of the 2nd defendant) entitled to "the balance extent of 2 acres 4 perches" subject to a life interest in favour of the 2nd defendant. The 1st to 7th defendants and the 10th defendant have appealed against this order.

It is manifest that the portion that was acquired for a cemetery was not owned in common by the Crown and the plaintiff or any other person. Nor was the defined portion that was sold to Tikiri Banda Nugawela owned in common by his heirs and the plaintiff or any of the other parties to the action. The learned judge's order in respect of lots 6 and 7 therefore cannot stand and must be set aside.

Punchi Etana, the grantee on P1, was the wife of one Don Pieris, whom she had married on the 10th August 1931. The deed purports to be a deed of gift. It describes the 1st defendant as the donor and his daughter Punchi Etana as the donee, and states that the donor "for and in consideration of the natural love and affection" which he has for the donee and "for and in consideration of the marriage" of the donee conveys certain property to her "by way of dowry". Punchi Etana died on the 23rd December 1935, and on the 29th July 1936, by the deed 1 D7, the 1st defendant purported to revoke the deed P1. The learned district judge holds that it is irrevocable and that the purported revocation is not valid.

The 1st defendant and Punchi Etana were persons governed by Kandyan Law, under which, subject to certain exceptions, donations are revocable. The ground of the learned district judge's finding that the deed P1 is irrevocable is that it falls within the principle of the decision in *Kandappa v. Charles Appu et al.* [1], that "where the parents give a deed as dowry before or at the time of marriage, or even after marriage, if it be in pursuance of a promise made before marriage the deed should be regarded as a deed for valuable consideration and so irrevocable": or, in other words, that such a deed is irrevocable not for the reason that it is a donation of a kind that is an exception to the rule as to revocability, but because it is not a donation at all. There is no evidence that the deed P1, which was executed 1 year and 4 months after the grantee's marriage, was given in pursuance of a promise made before marriage. It is, therefore, not within the principle of the decision in *Kandappa v. Charles Appu et al.* [1], but "it is a deed of gift in the real sense of the term, as there is no consideration in law but a mere inducement or motive actuating the

[1] *(1926) 27 N. L. R. 433.*

donor to exercise his generosity ". The mere fact that the deed describes the gift as " dowry " can make no difference, for, in the words of Pereira, J. in *Ram Menika v. Banda Lekam* [1], " a dowry may be a spontaneous and freewill gift by a parent to the contracting parties ". For these reasons I hold that the deed P1 was validly revoked by the deed 1 D7.

The order made by the learned district judge must be set aside and the plaintiff's action must be dismissed. The plaintiff must pay the appellants' costs in this court and the court below.

SANSONI, J.—I agree.

Appeal allowed.