

1943

Present : Wijewardene J.

WIJEYSINGHE, Appellant, and MOHOTTY *et al.*, Respondents.

132—C. R. Teldeniya, 240.

*Kandyan law—Deed of gift for services to be rendered—Revocability—Compensation for improvements—Kandyan Law Declaration and Amendment Ordinance, No. 39 of 1938, s. 6..*

Where, under the Kandyan law, a land is gifted for services to be rendered and the donee has performed up to date the services agreed upon, but there are further services to be rendered,—

Held, that the deed was revocable but that the donee was entitled to compensation for improvements effected by him in terms of section 6 of Ordinance No. 39 of 1938.

**A** PPEAL from a judgment of the Commissioner of Requests, Teldeniya.

E. B. Wickremanayake, for plaintiff, appellant.

S. A. Marikar, for defendants, respondents.

*Cur. adv. vuit.*

October 5, 1943. WIJEYWARDENE J.—

By deed No. 6,184 of October 4, 1923, one Kiri Banda Veda Mahatmaya donated a land to his son, the plaintiff. By deed P 1 of October 10, 1923, the plaintiff and Kiri Banda Veda Mahatmaya gifted the land to the defendants "with the object of getting services and work performed duly and faithfully on the occasion when any festivity or mourning shall occur in connection with either of the donors" or Loku Banda, a brother of the plaintiff. Kiri Banda Veda Mahatmaya died some years later, and the plaintiff by deed P 2 of July 16, 1942, revoked the deed of gift P 1. The plaintiff filed the action claiming the land against the defendants.

At the trial the first defendant gave evidence and stated that he entered into the possession of the land under the deed of gift, and rendered, as occasion arose, such services as he had to perform under the deed. The Commissioner of Requests accepted the evidence of the first defendant and held against the plaintiff as he thought that, in the circumstances of this case, it would be "most inequitable to allow revocation of the deed after 20 years."

The deed of gift P 1 contains no express renunciation of the power of revocation. Nor is it possible to gather an intention to renounce that power from the covenants in the deed. Here then we have a deed of gift for services to be rendered. The donees have performed up to date the services contracted for, but there are further services to be performed by them in future. Could the deed be revoked?

As a general rule, Kandyan deeds of gift are revocable, and before a particular deed is held to be an exception to that rule, it should be shown that the circumstances consisting non-revocability appear most

clearly on the face of the deed itself—*Bolonga v. Punchi Mahatmaya*<sup>1</sup> Armour mentions as an exception to this rule a gift made in consideration of payment of debts and for future assistance and support and containing a clause renouncing the right to revoke. Now, P 1 cannot come under that class of gift, as there is no renunciation of the right of revocation. In D. C. Kandy 22,404 (*Austin, p. 140*) the Supreme Court held a deed to be revocable when the donor transferred a land to another in consideration of assistance to be rendered, even after such assistance had been rendered. It was held further in that case that, if the donee had spent any money, he could make a claim for it, “the assumption being that the gifted land left him harmless during the time he rendered assistance”. I do not think it permissible to let considerations of natural equity override the Kandyan law on the subject. Moreover, there does not appear to be anything inequitable in permitting revocation as the donee was in possession of the land during the time he was rendering services and is also entitled to make a claim for improvements effected by him as set out in section 6 of Ordinance No. 39 of 1938.

I hold that the plaintiff's revocation of P 1 is valid. I set aside the judgment of the lower Court and hold the plaintiff entitled to the land. I send the case back for the Commissioner of Requests to assess the compensation, if any, lawfully due to the defendants for the improvements alleged to have been effected by them.

The appellant will have costs of appeal and costs of the last trial date in the lower Court. All other costs will be in discretion of the Court.

*Appeal allowed ;  
case remitted.*

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