

In the Privy Council.

UNIVERSITY OF LONDON
 W.C.1.
 - 9 FEB 1954
 LONDON
 LONDON

ON APPEAL

FROM THE SUPREME COURT OF CEYLON.

BETWEEN

33500

NOORUL MUHEETHA (Substituted Defendant) . *Appellant*

and

1. MRS. SITTIE RAFEEKA LEYAUDEFEN
2. MOHAMED AWFER
- 10 3. MOHAMED LAFIR
4. MRS. SITTIE SAMEENA AZVER and
5. AYNUL NASEERA (Plaintiffs) . . . *Respondents.*

Case for the Respondents

RECORD.

1. This is an appeal from a judgment and decree of the Supreme Court of Ceylon dated the 26th July 1950, affirming a judgment and decree of the District Court of Colombo dated the 31st May 1945, whereby it was adjudged and decreed that the Respondents were the lawful owners of certain landed property in Colombo and that the original Defendant in the proceedings (whose administrator, the present Appellant, was joined as substituted Defendant on the original Defendant's death) had no title thereto and should be ejected therefrom and pay damages to the Respondents for wrongful occupation at the rate of Rs. 350/- a year.

pp. 23-27; p. 27.
pp. 15-17; p. 18.

2. The questions which arise on the appeal are as to the proper law of a deed of gift of the property in question in favour of the Respondents and as to its validity under such law as may be held to be its proper law.

3. There was no dispute on any of the material facts in the case which were as set out in paragraphs 4 to 7 hereof inclusive.

4. The property in question belonged to one Saffra Umma. Saffra Umma had two sons, Mohamed Sathuk, the original Defendant in the proceedings, and Mohamed Zain. The latter married one Fatheela Umma and their five children were the present Respondents who were born on the 4th January 1914, the 13th April 1915, the 22nd March 1917, the

p. 7, l. 22;
p. 11, l. 18.
p. 14.

9th December 1920 and the 22nd May 1922. In other words they were the grandchildren of Saffra Umma and the nephews and nieces of the original Defendant. Their father Mohamed Zain had died at some time prior to the 28th June 1927 and his widow Fatheela Umma was appointed administratrix of his estate. In due course on the 31st May 1933 she was appointed guardian of the person and curatrix of the property of the Respondents, who were all still minors.

p. 14, l. 10.
p. 14, l. 25.
p. 14, l. 22.

pp. 39-42.

5. On the 28th June 1927 the grandmother Saffra Umma executed a deed of gift (P.1) whereby, subject to reserving a life interest for herself, she donated the property in question to the Respondents with a fidei commissum for the benefit of their children after their deaths. This deed was accepted by Fatheela Umma on behalf of the donees, they all being minors. The deed was further executed by the original Defendant as it contained a clause binding on him as follows :—

p. 40, l. 38.

p. 40, ll. 23-37.

“ And the said Idroos Lebbe Marikar Mohamed Sathuk who is the paternal uncle of the said donees doth hereby renounce all and every right interest or claim whatsoever which he may have or shall have in respect of the said premises hereby gifted adverse to them and in the event of any question arising as to the validity of these presents by reason of the said donees not being put into possession of the said premises according to law the said Idroos Lebbe Marikar Mohamed Sathuk hereby agrees not to take any objection whatsoever to his advantage or to take any other steps whatsoever detrimental to the interests of the said donees in respect of the premises hereby conveyed.”

pp. 42-4.

6. On the 4th February 1928 the grandmother Saffra Umma executed a deed D.1 purporting to revoke the deed of gift P.1 and to donate the property in question to the original Defendant, the Respondents' uncle.

p. 14, l. 13.
p. 14, l. 26.

7. Saffra Umma died on the 6th December 1929 and upon and after her death the original Defendant assumed possession of the property in question and received the rents and profits thereof.

p. 7.

8. On the 27th September 1943 the Respondents as Plaintiffs commenced ejectment proceedings in the District Court of Colombo, founding themselves on P.1 as enforcing valid title in them. They accordingly claimed the relief set out in detail in their Plaint.

p. 11.

9. The original Defendant by his Answer dated the 3rd February 1944 disputed the validity of P.1 and set up title in himself pursuant to D.1.

p. 13.
p. 13, l. 13.

10. At the hearing of the action issues were framed which are set out in full in the Record. It was at the same time agreed between the parties that any damages recoverable by the Respondents should be at the rate of Rs. 350/- per annum and should be limited to the period beginning two years prior to action brought and ending when possession was obtained.

pp. 16-17.

11. It being quite plain that D.1 could be of no effect unless P.1 could be invalidated, the whole case turned on the validity of the latter deed. For the Respondents it was contended that, inasmuch as this deed

contained a valid fidei commissum and a reservation of a life interest to the donor, both features of Roman Dutch law, the general basic law of Ceylon, this was the proper law of the deed and according to this law the acceptance by the Respondents' mother was unimpeachable. Furthermore even if Muslim law was relevant in relation at any rate to the acceptance of the gift, it was only Muslim law as accepted by the *cursus curiæ* in Ceylon which could be applicable, and so much of Muslim law as ruled out a mother from being a natural guardian had never been so accepted. For the Appellant on the other hand it was contended that the pure Muslim law applicable to
 10 the Shafie School of the Sunni Sect was the proper law at any rate as regards acceptance, and that the Respondents' mother was not the legal or natural guardian according to their system of law and her acceptance being therefore a nullity, the whole deed failed for lack of a valid acceptance.

12. In his judgment delivered on the 31st May 1945 the District Judge of Colombo upheld the first contentions of the Respondent saying that "once it is admitted that the document is a deed of gift creating a fidei commissum, then it seems to me clear that the transaction as a whole must conform to the requirements of Roman Dutch law. Under the Roman Dutch law the surviving parent can accept a gift on behalf of the
 20 minor children. I hold therefore that the acceptance by the mother on behalf of the minor children was a valid acceptance." On the question of revocation he similarly held that "it is clear law that under the Roman Dutch law a deed of gift cannot be revoked by the donor except in special circumstances or unless the power of revocation is expressly reserved." Accordingly he adjudged that the Respondents were entitled to the relief they claimed and a decree of the District Court was entered accordingly.

13. On appeal by the substituted Defendant (the original Defendant having died meanwhile) to the Supreme Court it appears that only the question of the acceptance was argued, and on this the Court (Dias, S.P.J., and Palle, P.J.) affirmed the decision of the District Court. In the leading
 30 judgment Palle, J., said that there was undoubtedly authority for the statement that in Muslim law a mother is not the natural guardian, but added that "it is clear that under the Roman Dutch law upon the death of the father the mother is vested in the rights of control over the person and property of her children in the absence of special arrangements made by the father in a testamentary disposition. In the present case there is no suggestion that anyone else besides Fatheela Umma exercised de facto the rights of a guardian over her children. From the death of her husband she was appointed administratrix of his estate. Further in 1933 she was
 40 appointed by Court curator of the estate and guardian of the person of the minors. I do not see anything intrinsically objectionable in these circumstances in regarding Fatheela Umma in the Roman Dutch law sense as a natural guardian entitled to accept the gift for and on behalf of her minor children." The learned Judge further held that the transaction could not be split up but was governed as a whole by Roman Dutch law, with the result that, the mother being the natural guardian by that law, her acceptance was valid. He held further that even if Muslim law were to be regarded as applicable to the acceptance, it could only be Muslim law as accepted in Ceylon and that no authority had been cited showing that a

p. 26, l. 19.
p. 26, ll. 22-40.

Muslim widow in Ceylon was not regarded as the natural guardian of her minor children. Indeed the trend of authority in Ceylon was to prefer the parents to those regarded more highly according to the text of the Koran. In accordance with this judgment, with which Dias, S.P.J., agreed, a decree dismissing the appeal with costs was entered on the 26th July 1950.

14. In addition to relying on both these judgments and the reasoning on which they are based, the Respondents will in addition contend that the original Defendant and also his successor the substituted Defendant is estopped from challenging the validity of the deed to which he, the original Defendant, was a party and by which he renounced all and every right, interest or claim whatsoever which he might then or thereafter have in respect of the property in question. 10

15. The Respondents humbly submit that this appeal ought to be dismissed with costs for the following amongst other

REASONS

- (1) BECAUSE the deed of gift in favour of the Respondents was intended to operate in accordance with Roman Dutch law.
- (2) BECAUSE the acceptance of the gift comprised in the said deed was a valid acceptance according to Roman Dutch law. 20
- (3) BECAUSE even if Muslim law be held applicable to the acceptance of the said gift regard could only be had to Muslim law as accepted by the *cursus curiæ* in Ceylon.
- (4) BECAUSE by such Muslim law the mother of the Respondents was not precluded from making an acceptance of the said gift.
- (5) BECAUSE *de facto* as well as *de jure* the mother of the Respondents was their guardian. 30
- (6) BECAUSE no one else has been suggested as the proper person to have made acceptance of the said gift on behalf of the Respondents.
- (7) BECAUSE the Appellant like his predecessor in title is estopped from disputing the validity of the said deed of gift.
- (8) BECAUSE the decisions of the District Court of Colombo and the Supreme Court are right and ought to be affirmed.

STEPHEN CHAPMAN. 40

In the Privy Council.

ON APPEAL
from the Supreme Court of Ceylon.

BETWEEN
NOORUL MUHEETHA
(Substituted Defendant) . Appellant
AND
LEYAUDEEN and Others
(Plaintiffs) . . . Respondents.

Case for the Respondents

SMILES & CO.,
15 Bedford Row,
London, W.C.2,
Solicitors for the Respondents.