

16 JAN 1969

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LONDON W.C.1

IN HER MAJESTY'S PRIVY COUNCIL

No. 24 of 1967

O N A P P E A L
FROM THE SUPREME COURT OF CEYLON

B E T W E E N :-

TIKIRI BANDA DULLEWE

Appellant

- and -

1. PADMA RUKMANI DULLEWE
2. ~~LOKU BANDA GIRAGAMA~~

Respondents

C A S E FOR THE ^{FIRST} RESPONDENT

- 10 1. This is an Appeal from the Judgment and Decree of the pp.48-50
Supreme Court of Ceylon both dated the 3rd day of
December 1965 (T.S. Fernando and A.L.S. Sirimane J.J.)
dismissing with costs the appeal of the Appellant from
the Judgment and Decree both dated the 9th day of
September 1963 of the District Court of Kandy (V.
Siva Supramaniam J.) pp.33-43
- 20 2. The principal question raised in this Appeal
is whether a deed which was expressed to be irrevocable was
irrevocable in law having regard, in particular, to
the provisions of the Kandyan Law Declaration and
Amendment Ordinance (Cap. 59).
- 30 3. The action was commenced on the 18th day of May
1959 by the Respondent who, having been born in May
1943 was an infant aged 15 years at the time and acted
through her next friend Loku Banda Giragama. The pp.11-12
Respondent claimed a declaration of title over
certain lands and premises specified in a Schedule
to the Plaint and damages for wrongful possession by pp.12-18
the Appellant. The Respondent attained majority by
the date of the hearing on the 30th day of August p.33 l.3
1963. p.34 l.1
4. The case for the Respondent was that the
Respondent's grandfather (Rate Adigar) was the p.11
owner of the property in dispute which he gifted
to his son (Richard Dullewe), the father of the

(P1) p.57	Respondent, by a deed No.183 of 26th May 1941, and the son went into possession. The son died about May 1943 leaving his daughter, the Respondent, as his only heir who thus became entitled to the property. The Appellant, however, wrongfully entered into possession in November 1943.	
pp.24-36 (p. 89 l.11)	5. By his Answer dated 7th day of July 1959 the Appellant (another son of Rate Adigar) admitted the execution of the deed to Richard Dullewe but denied that Richard Dullewe entered into possession of the property before his death and contended that the deed had been revoked in respect (inter alia) of the property in dispute by a further deed No. 9048 dated 26th October 1943 and that by a second deed of the same date No. 9049, the property had been gifted to him. The Appellant further claimed that he had acquired a prescriptive title as a result of adverse possession for a period exceeding ten years. He also contested the right of the Respondent to institute the proceedings as there had been no testamentary proceedings in respect of the estate of Richard Dullewe.	10
(P2) p.77		
(P3) p.89		
p.32	6. The following issues were agreed between the parties:- 1. Was deed No.183 of 26th May 1941 a revocable deed? 2. If not, is the Plaintiff entitled to claim all the lands on the said deed of gift? 3. Is the purported revocation No. 9068 of 1943 bad and ineffectual in law? 4. Damages?	20
pp. 32-33	7. The action was heard on the 30th day of August 1963 when the only witness was the said Loku Banda Giragama who was father-in-law of Richard Dullewe, who produced the three deeds. The deed of 1941 contains the following provision:-	
p. 58	" doth hereby grant, convey, assign, transfer, set over and assure unto the said DONEE as a gift irrevocable but subject to the condition hereinafter contained."	40

The condition was in restraint of alienation by the donee and was expressed to be so that after the donee's death the properties thereby donated should devolve absolutely upon the legal issue of the donee Richard Dullewe and in the event of the donee dying without legal issue should devolve absolutely upon the Appellant. On behalf of the Appellant it was argued that the words used did not constitute an express renunciation of the right of revocation as was required by the Ordinance. This contention was rejected by the learned trial judge on the authority of Punchi Banda v. Nagasena, 64 N.L.R. 548, where the single word "irrevocable" had been used and he gave Judgment in favour of the Respondent on the 9th day of September 1963.

pp. 33-4

8. The relevant sections of the Ordinance are as follows:-

4. (1) Subject to the provisions and exceptions hereinafter contained, a donor may, during his lifetime and without the consent of the donee or of any other person; cancel or revoke in whole or in part any gift, whether made before or after the commencement of this Ordinance, and such gift and any instrument effecting the same shall thereupon become void and of no effect to the extent set forth in the instrument of cancellation or revocation:

Provided that the right, title, or interest of any person in any immovable property shall not, if such right title, or interest has accrued before the commencement of this Ordinance, be affected or prejudiced by reason of the cancellation or revocation of the gift to any greater extent than it might have been if this Ordinance had not been enacted.

(2) No such cancellation or revocation of a gift effected after the commencement of this Ordinance shall be of force or avail in law unless it shall be effected by an instrument in writing declaring that such gift is cancelled or revoked and signed and executed by the donor or by some person lawfully authorized by him in accordance with the provisions of the Prevention of Frauds Ordinance or of the Deeds and Documents (Execution before Public Officers) Ordinance.

4.

5. (1) Notwithstanding the provisions of Section 4(1), it shall not be lawful for a donor to cancel or revoke any of the following gifts where any such gift is made after the commencement of this Ordinance:-

(d) any gift, the right to cancel or revoke which shall have been expressly renounced by the donor, either in the instrument effecting that gift or in any subsequent instrument, by a declaration containing the words "I renounce the right to revoke" or words of substantially the same meaning or, if the language of the instrument be not English, the equivalent of those words in the language of the instrument:

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pp. 47-8

9. The District Court granted a stay of execution and the Appellant lodged a petition of appeal to the Supreme Court upon the 9th day of September 1963 upon the following grounds:-

(a) The Judgment is contrary to law,

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(b) The Donor in Deed No. 183 of 26th May 1941 had a right to revoke the Deed of Gift as he had not renounced his right to revoke,

(c) The words "Irrevocable" in the Deed No.183 of 26th May 1941 do not constitute

(1) An express renunciation of the right of revocation

(2) A sufficient compliance with the requirements of Section 5(d) of Chapter 50 (quoere 59) of the Revised (1956) Legislative Enactments of Ceylon.

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(d) The said Deed No. 183 of 26th May 1941 has thus been validly revoked by Deed No.9048 of the 26th October 1943 and thus the title to the premises in suit is in Defendant Appellant.

pp. 48-9

10. The appeal was argued on 4th day of November 1965 and the Supreme Court gave Judgment on the 3rd day of December 1965. In the course of the said

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Judgment the decision of Punchi Banda v. Nagasena (Supra) was expressly affirmed and the appeal was dismissed with costs.

11. On the 22nd day of December the Appellant applied for conditional leave to appeal to Her Majesty in Council which was granted upon the 21st day of June 1966. Final leave was granted upon the 13th day of August 1966.

pp. 51-2
p. 53
pp.55-6

10 12. The Respondent humbly submits that the Courts below were correct in their findings in respect of the deed of 1941 and the application of the relevant Ordinance and were also correct in following previous legal authority.

13. The Respondent humbly submits that this Appeal should be dismissed with costs for the following, among other,

R E A S O N S

- (1) THERE have been concurrent findings in favour of the Respondents.
- 20 (2) THE reasons given for the decisions of the Courts below were correct in fact and in law.
- (3) THE case of Punchi Banda v. Nagasena 64 N.L.R. 584 was correctly decided and should be followed.

JOHN A. BAKER

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2. LOKU BANDA GIRAGAMA

C A S E FOR THE ^{FIRST} RESPONDENT

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