IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

1. Uduwewe Henayalage Babanis
2. Uduwewe Henayalage Piyadasa

Walapaluwa, Mandapola Post.

PLAINTIFFS

C.A. Case No. 65/2000 F

D.C. Kuliyapitiya Case No. 10883/L

-Vs-

Uduwewe Henayalage Samara,
Walapaluwa, Mandapola Post.
DEFENDANT

AND BETWEEN

Uduwewe Henayalage Samara,
Walapaluwa, Mandapola Post.
DEFENDANT-APPELLANT

-Vs-

1. Uduwewe Henayalage Babanis
2. Uduwewe Henayalage Piyadasa

Walapaluwa, Mandapola Post.

PLAINTIFF-RESPONDENTS

BEFORE : A.H.M.D. Nawaz, J.

COUNSEL : Chula Bandara with Anuradha Dias for the Defendant-Appellant.

M.C. Jayaratne with M.D.J. Bandara for thePlaintiff-Respondents.

Decided on : 16.07.2018

A.H.M.D. Nawaz, J.

By a plaint dated 3rd March 1994 the Plaintiff-Respondents (hereinafter sometimes referred to as "the Plaintiffs") instituted this action seeking *inter alia* a declaration of title to the land known as "*Pokunehena alias Thimbirigahamulawatta*" more fully described in the Schedule to the plaint, ejectment of the Defendant-Appellant (hereinafter sometimes referred to as "the Defendant") and all those holding under him and recovery of possession of the land in question.

The case of the Plaintiffs-a father (1st Plaintiff) and son (2nd Plaintiff) who were designated as the 1st Plaintiff and 2nd Plaintiff went as follows:-

The 1st Plaintiff and the sole Defendant in the case were siblings whose father (henceforth known as *Pina*) first made a gift of the land in question to the Defendant by a Deed bearing No. 4892 and dated 02nd August 1978. The Plaintiffs averred that there was a change of heart in the *pater familias* who later revoked the deed of gift by a deed of revocation bearing No.200and dated 9th June 1983. On the same day namely 9th June 1983 as the deed of revocation was executed, and hot on its heels the old manexecuted another deed in favour of the 1st Plaintiff and 2nd Plaintiff, which gave them title. This new deed bears the No.201 on which the Plaintiffs founded their action. The plaint further averred that the Defendant, being a brother of the 1st Plaintiff, was let into the subject-matter after the death of the father on 04th July 1986 with the leave and licence of the Plaintiffs and though he had been requested to hand over possession, he refused to do so and thus the cause of action was premised on a declaration of title and ejectment.

The Defendant traversing the averments in the plaint demurred in his answer and stated that the revocation of the deed of gift in his favour and the deed of transfer in favour of the Plaintiffs were fraudulently effected. His allegation is that the Plaintiffs entered the land forcibly after the father had passed away in 1986 and disturbed his possession. The Defendant sought a dismissal of the action instituted by the Plaintiffs.

The learned Additional District Judge of *Kuliyapitiya* found for the Plaintiffs by his judgment dated 29th February 2000 and his conclusion is that the deeds of revocation and transfer which both took place on 09.06.1983 had been duly executed. The learned Additional District Judge also concluded that *Pina*-the father of the 1st Plaintiff and Defendant, had been subject to Kandyan law, though his reasoning is sparse on the matter.

The only issue, as the Counsel for the Defendant-Appellant quite succinctly put it at the hearing, is whether the father's revocation of the deed of gift (*Pina's* act of revocation) is valid and effectual in view of the argument that the father *(Pina)* has not been proved to be a Kandyan. In other words the argument of the learned Counsel for the Defendant-Appellant is that there is no sufficient proof of the fact before Court that the father *Pina* was subject to Kandyan law and therefore his revocation of the deed of gift on 09.06.1983 was not legally effective to give validity to the subsequent deed in favour of the Plaintiffs.

Let me put in a nutshell the three jural relations that are brought out by the acts of *Pina*-the father of the 1st Plaintiff and Defendant.

1. The father *Pina* executed a deed of gift bearing No. 4892 dated 02.08.1978 **(V1)** in favour of his younger son (the Defendant).
2. 5 years later on 09.06.1983 the donor *(Pina)* revoked the aforesaid deed of gift by a deed of revocation bearing No. 200 **(P1)**
3. On the same day namely 09.06.1983 *Pina* transferred the land by a deed of transfer bearing No. 201 to his elder son 1st Plaintiff and grandson 2nd Plaintiff **(P2).**

As I said before, it is the 2nd transaction-the deed of revocation that was impugned before this Court. Laconically put, the argument was that *Pina* was not established by evidence to be a person subject to Kandyan law and therefore he could not have validly revoked the deed of gift in favour of the Defendant. Upon a careful consideration of the totality of evidence in the case I find that the Defendant had confirmed in his cross-examination that **P1** (the deed of revocation) contained his father's signature. The attesting witnesses to the deed also gave evidence and attested to the fact that it was *Pina* (the father) who signed the deed of revocation and the deed of transfer in the same breath. Thus the Defendant himself disproved his allegation in his issues that the deeds of revocation and transfer were fraudulent, leave alone the evidence of the witnesses who established the due execution of the deeds.

Thus the only mode of attack by the Defendant-Appellant in this appeal was based on the personal law of *Pina*. The argument was mounted before this Court that *Pina* was not a person subject to Kandyan law and therefore he would not enjoy the power of a unilateral revocation of the deed of donation which he had made in favour of the Defendant.

The liberality of revocation of deeds of donation that prevails in Kandyan law has an interesting genesis and I think it appropriate to set it down here though the issue before me is whether the Plaintiffs proved on evidence that *Pina* was subject to Kandyan law. Before I come to that dispositive issue in the case, let me allude to the right of a donor to revoke his deed of gift in Kandyan law.

Revocability of Deeds of Gift in Kandyan Law

As doubts arose on account of some decisions of the Supreme Court with regard to the exceptions to the general rule that the Kandyan Deeds of Gifts are revocable, the Kandyan Law Codification Commission was appointed in 1927. This Commission recommended in its Report for 'a legislation containing a clause renouncing the right to revoke in explicit terms and according to a form prescribed, which is the need to minimize the evils of litigation and to give a certain amount of security and stability to

titles derived by Deeds of Gift'. The Commissioners stated that, "we believe that these recommendations if given legislative force will, while preserving the spirit of the ancient law on the subject, remove certain hardships which are experienced by donees".

Based on this Report, the Kandyan Law Declaration and Amendment Ordinance No. 39 of 1938 was enacted. With regard to revocation of gifts, subsections (1) and (2) of Section 4 of the Kandyan Law Declaration and Amendment Ordinance No.39 of 1938 become pertinent:-

4(1)

> *"subject to the provisions and exceptions hereinafter contained, a donor may, during his life time 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....."*

4(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 be 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."*

However, the following deeds of gift made after the commencement of this Ordinance cannot be revoked.

(a) Gift to a temple

(b) Gift in consideration of a future marriage which takes place subsequently.

(c) Gift creating a charitable trust in terms of section 99 of the Trusts Ordinance.

(d) A gift, the cancellation of which is expressly renounced by the donor, either in the same instrument or by a 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 Sinhala, the equivalent of those words in the language of the instrument. (Section 5(1) of the Ordinance).

For a renunciation of the right to revoke to become effective, the requirements are contained in Section 5(1)(d):-

1. there must be a renunciation of the right to revoke,
2. which is express,
3. made by the donor in a declaration,
4. containing the words "I renounce the right to revoke" or words of substantially the same meaning.

The following judgment went against the grain of the stipulation in Section 5 (1) (d) of the Kandyan Law Declaration and Amendment Ordinance No.39 of 1938

Sansoni C.J. in the case of ***Punchi Banda v. Nagasena***[1] said,

> *"the question of the revocability of the deeds depends solely on whether the first clause of the deeds already reproduced, satisfies the requirements of section 5(1)(d) of the Ordinance...Now the clause under consideration is nothing less than a declaration by the donor, expressed in the first person, for he declares that he gives the property as a gift. He describes the gift as "irrevocable", and the question that remains for consideration is whether, by the use of that single word, he has expressly renounced the right to revoke. I can see no need for a separate clause containing such a renunciation.....it is only a donor who has the right to revoke a gift. When he declares that the gift is irrevocable, he is expressly renouncing that right."*

The effect of this decision was that the use of the word "irrevocable" in a deed of gift was sufficient to constitute an express renunciation of the right torevoke the gift.There was no need for a sentence "I renounce the right to revoke"-words of substantially the

[1] 64 N.L.R. 548

same meaning. This judgment was overruled by the Privy Council in ***Dullewe v. Dullewe***[2]

In ***Ukku Banda v. Paulis Singho***[3] a case decided before Kandyan Law Declaration and Amendment Ordinance No.39 of 1938 was enacted, it was held that the words "absolute and irrevocable" are an express and unmistakable renunciation of the right to revoke. This would again not represent the correct law as was set down by the Privy Council in ***Dullewe v. Dullewe*** *(supra)*.

In ***Kumarihamy v. Banda***[4] it was held that where in a Kandyan deed of gift the donor declares in the most clear language that the deed is irrevocable, there was a declaration by the donor and that he is not entitled to go back on it. The words that had been used in the deed were "by way of gift absolute and irrevocable under any circumstances whatsoever hereafter....".

The above authorities would not represent the law in view of the decision in ***Dullewe v. Dullewe*** *(supra)* which insists on a transitive verb to be used if the right to revoke a previous deed of gift were to become effective. As would be seen, later cases in Sri Lanka have affirmed the view of *Dullewe (supra)*.

The paradigmatic case that appears to have marked a watershed in interpreting the right to revoke given in the law (Sections 4 and 5 of Kandyan Law Declaration and Amendment Ordinance No.39 of 1938) was ***Dullewe v. Dullewe***[5] in which the Privy Council by a majority decision[6] held that, "a Kandyan Deed of Gift is revocable unless the right of revocation is expressly renounced in the particular manner stated in Section 5(1)(d) of the Kandyan Law Declaration and Amendment Ordinance No.39 of 1938" The Privy Council drew attention toa further requirement that the renunciation must be effected in a particular way videlicet by a declaration containing the words "I renounce the right to revoke" or words of substantially the same meaning. In other

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[2] 71 N.L.R 289.
[3] 27 N.L.R. 449
[4] 62 N.L.R. 68
[5] 71 N.L.R. 289
[6] See (1969) 2 A.C.313: (1969) 2 W.L.R 811 reported *sub nom Dullewe (Tikkiri Banda) v Dullewe (Padma Rukmani)*

words the renunciation of the inherent right to revoke must be couched in a sentence with a transitive verb taking an object such as "renounce the right to revoke". There has to be a declaration with a transitive verb. An adjectival clause such as "as a gift irrevocable" will not suffice for purposes of the renunciation of the right to revoke a Kandyan deed of gift. This is what the majority judgment of Lord Hodson advised Her Majesty with Lord Guest, Lord Upjohn and Sir Thaddeus McCarthy in concurrence on 4th December 1968.

In this case Lord Donovan in a dissenting judgment stated that the Donor in the case had expressly indicated that the lands were to be "a gift irrevocable" and therefore Lord Donovan expressed the view that, "the words as a gift irrevocable' means 'not capable of revocation'; and the capacity to revoke obviously depends upon the existence of a right to do so.....When, therefore, the donor uses a word which indicates that the gift is not to be capable of revocation, he is saying that he shall not enjoy the right to revoke which he would otherwise possess. In other words he is renouncing that right". For Lord Donovan the words "as a gift irrevocable" are expressly sufficient to renounce the existing right to revoke. Lord Donovan's dissenting judgment affirmed the decision in ***Punchi Banda v. Nagasena*** *(supra)* which was though overruled by the majority judgment.

There was support for the dissenting judgment of Lord Donovan in *Dullewe (supra)* and this support could be seen in the Court of Appeal judgment of ***P.B. Ratnayake v. M.S.B.J. Bandara***,[7], where Seneviratne, J. (P/CA) expressed the opinion that Lord Donovan's view on revocability was correct. This was a case where the donation by a Kandyan was expressed in the deed to be absolute and irrevocable. Despite this formulation Seneviratne, J. opined that the donor could revoke the donation. This is then a view which accords with the majority in *Dullewe*. Even so Seneviratne, J. expressed a preference for the dissenting judgment of Lord Donovan in the following tenor- "after due consideration I agree with the dissenting judgment of Lord Donovan and it is mainly to express this view that I have written a supplementary judgment.

[7] 1986 (1) Sri L.R 245 (CA)

However, this Court is bound by the majority judgment of the Privy Council in *Dullewe's* case as it was at that time the supreme and final Court of Appeal".

However, leave was granted in this case by the Court of Appeal to appeal to the Supreme Court on the substantial point of law, namely; *whether the deed No.8247 (P1) was revocable.* When the case ***P.B. Ratnayake v. M.S.B.J. Bandara***[8] came up in appeal to the Supreme Court, a Bench of nine Judges (Ranasinghe, C.J., H.D. Tambiah, J., H.A. De Silva, J., G.P.S.De Silva, J., Bandaranayake, J., Mark Fernando, J., Amerasinghe, J., Kulatunga, J. and Dheeraratne, J.) was constituted to look into the correctness of the decision in *Dullewe's* case. Ranasinghe, C.J. with whom H.A. De Silva, J., G.P.S. De Silva, J. and Kulatunga, J. agreed held:-

> *"the Privy Council judgment in* ***Dullewe v. Dullewe*** *71 N.L.R 289 is not binding on the Supreme Court. Though that judgment is of great value the question decided there is open to review, and the dissenting judgment of Lord Donovan was the correct view on the subject."*

But a majority of five judges (H.D. Tambiah, J., with Bandaranayake, J., Mark Fernando, J., Amerasinghe, J. and Dheeraratne, J. agreeing) veered towards the majority judgment of the Privy Council in *Dullewe (supra).*It was held by the majority judgment:-

> *"The Kandyan Law Declaration and Amendment Ordinance No.39 of 1938 is an Ordinance to declare and amend the Kandyan Law. It seeks to amend the Kandyan Law and not to make a mere statement of the law as it was prior to 1939 when the intention to renounce the right to revoke was inferred or deduced from the particular words used. The amending Ordinance has enacted a uniform rule requiring an express and not merely inferential renunciation of the right of revocation The words 'expressly renounced' in s. 5(1) (d) of the Ordinance recognise a pre-existing right to revoke which every Kandyan donor had in Kandyan Law. What the Ordinance contemplates is an express and deliberate renunciation by the donor of his right to revoke. From the words "absolute and irrevocable" it may be implied that the donor intendedto revoke butsuch an expression would not constitute an express renunciation of the right to revoke.*

[8] 1990 (1) Sri.LR 156 (SC)

There is a further requirement that the renunciation must be effected in a particular way, viz, by a declaration containing the words "I renounce the right to revoke" or words of substantially the same meaning.

The Ordinance by Section 5(1)(d) has now vested in the Donor a statutory right to revoke and he is required to exercise that right in a particular way.

The words "absolute and irrevocable" are only an adjectival description of the gift but the essential requirement is a transitive verb of express renunciation Words merely of further assurance are insufficient."

The majority view endorses the Privy Council stipulation that the words "absolute and irrevocable" are only an adjectival description of the right but the essential requirement is a transitive verb of express renunciation. The majority judgment expressed that requirement thus:-

"There is a further requirement that the renunciation must be effected in a particular way, viz, by a declaration containing the words "I renounce the right to revoke" or words of substantially the same meaning. The Ordinance by section 5 (1) (d) has now vested in the Donor a statutory right to revoke and he is required to exercise that right in a particular way."

There have been subsequent decisions of our Courts which have confirmed the majority judgment in ***Ratnayake v. Bandara*** *(supra).*

In the case of ***Somalatha and others v. Wickremasinghe and others***,[9] one **R** gifted irrevocably the premises in dispute to one **S**, subject to the life interest of the donor's wife. Subsequently, the donor revoked the said gift and the question was whether that deed of gift was revocable. It was held that;

(1) Kandyan law gives the right to a donor without the consent of the donee or any other person such as the life interest holder, to cancel or revoke any gift by an instrument in writing in conformity with the law.

[9](2002) 2 Sri.LR 347

(2) However, a gift to a temple, gift in consideration of marriage, gifts effecting a charitable trust and gifts where the right to revoke is renounced under Section 5 (1)(d) are the exceptions, and

(3) Although the donor explained in the deed of gift that he was giving the gift which was irrevocable and absolute under all circumstances, he did not say that he was renouncing his right to revoke such an 'irrevocable and absolute' gift. The section expected such renunciation in words similar to what is mentioned in Section 5(1) (d), if a gift was to be considered as an exception to the general rule of revocability of gifts under the Kandyan Law.

Thus Section 4(1) of the Kandyan Law Declaration and Amendment Ordinance No.39 of 1938 makes provisions for a revocation of a deed of gift by the donor during his lifetime, without the consent of the donee or of any other person, in whole or in part of any gift, whether it was 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.

As I said before, the method of revocation is provided for in subsection (2) of Section 4. A revocation is valid only if it is effected by an instrument in writing declaring that the gift is cancelled or revoked by the donor or by someone lawfully authorized by him in accordance with the provisions of the Prevention of Frauds Ordinance or of the Deeds and Documents (Executed before Public Officers) Ordinance.

Sections 4 and 5 of this Ordinance obviously were intended to clarify and perhaps also to simplify the law relating to the revocation of gifts made by persons governed by the Kandyan law. Section 4 of the Ordinance confers on any donor an unrestricted right of revocation of any gift, except those that are referred to in Section 5 which also prescribes a formula to renounce the right to revoke.

Today there is no ambiguity on the right of a Kandyan donor to revoke his deed of gift and the matter is settled that his right to revoke survives unless he has used a transitive

verb such as (I renounce my right to revoke the deed or words of similar import with transitivity)-*see* ***Dullewe v. Dullewe; P.B. Ratnayake v. M.S.B.J. Bandara*** *(supra).*

There are no transitive verbs used in the deed of donation bearing No. 4892 that would renounce the right to revoke and therefore the donor *Pina* enjoyed an absolute right to revoke the above deed provided he was a Kandyan. Therefore what was pivotal to the exercise of the right of revocation of the deed of gift was the requirement that *Pina* was a person subject to Kandyan law.

Was *Pina* a person subject to Kandyan law?

There is no discussion of this by the learned Additional District Judge though there was an issue raised by the Plaintiffs whether *Pina* (the father of the 1st Plaintiff and the Defendant) was subject to Kandyan law and in answering the issue in the affirmative the learned Additional District Judge stated that oral and documentary testimony has revealed that *Pina* was subject to Kandyan law. What was this oral testimony?

The items of evidence as to the assertion of Kandyan law rights on the part of *Pina* are scattered in the appeal brief. The 1st Plaintiff quite categorically declares in evidence that his father-*Pina* (the donor of the deed bearing No. 4892 who later revoked this deed) was subject to Kandyan law-*see* page 1 of the proceedings dated 19.11.1997.

At page 17 of the proceedings dated 23.09.1998 the Defendant also speaks to the territorial inhabitancy of his father *Pina*. The Defendant confirms in cross-examination that *Walapaluwa*-the village where the father had resided lies in the District of Kurunegala and generations of his clan had been long resident in this domicile.

The provinces that are specified as Kandyan Provinces are given in Part I of the Schedule to the Kandyan Marriage and Divorce Act No. 44 of 1952. They are:-

(1) The Central Province

(2) The North-Central Province

(3) The Province of Uva

(4) The Province of Sabragamuwa

The areas specified hereunder:-

(1) Chinnacheddikulam East and West Korale and Kilakkumulai Korale in the Vavuniya District, ofthe Northern Province.

(2) The Kurunegala District, and Demala Hathpattu in the Puttalam District, of the North Western Province.

Both these items of evidence remains uncontradicted and there is no evidence in rebuttal to show that *Pina* was not subject to Kandyan law-*see* the pronouncement of H.N.G. Fernando, C.J (with Tambiah, J. and Siva Supramaniam, J. in concurrence) in ***Edrick de Silva v. Chandradasa de Silva***[10]. That pronouncement which turns on the quantum of proof would be to the effect that if the Plaintiff leads evidence and the Defendant does not contradict it, that would be an additional "matter before Court," which the definition in Section 3 of the Evidence Ordinance requires the Court to take into account. When the evidence transpired in the testimony of the 1st Plaintiff that his father *Pina* who also fathered the Defendant was subject to Kandyan law, it was open to the Defendant to have assailed and repudiated this fact. But the Defendant remained silent on this assertion.

Silence amounting to an admission

There was not even a cross-examination of the 1st Plaintiff on his testimony as to this material fact. The fact that *Pina* should be a person subject to Kandyan law was an issue raised by the Plaintiffs but the silence of the Defendant in the face of a positive assertion by the 1st Plaintiff that their father was subject to Kandyan law will inferentially amount to an admission on the part of the Defendant. There was more incentive for the Defendant to disprove this fact as his case for a dismissal of the Plaintiffs' case depended on disproof of the assertion that *Pina* was subject to Kandyan law. But the Defendant chose not to disprove it and I therefore I would take the view that the Defendant's silence in Court would amount to an admission. Silence in court

[10] 70 N.L.R 169 at 174

may be used to strengthen inferences from opposing evidence-see a valuable article by J.D. Heydon, **Silence as evidence** 1 *Monash University Law Review* 53 (1974).

Thus the evidence emanating from both the 1st Plaintiff and the Defendant himself in cross-examination, gives credence to the probability that *Pina*-the donor of the deed of gift was subject to Kandyan law, within the standard of proof stipulated for civil trials-the preponderance of evidence or balance of probabilities.

Persons subject to Kandyan law

No doubt, there was no discussion by the learned Additional District Judge of *Kuliyapitiya* on this matter and submission was made to the effect that the affirmative answer to the issue whether *Pina* was subject to Kandyan was a bare answer that did not comply with Section 187 of the Civil Procedure Code. The proposition that a bare answer to an issue will vitiate a judgment (*see* ***Warnakula v. Ramani Jayawardene*** (1990) 1 Sri LR 206) is not an inflexible rule. Even if there is sparse discussion by original court judges but there is evidence to support the answer given to the issue, that will amount to proof of the fact in issue. After all evidence is led to prove a fact in issue. It is certainly a vice to routinely adopt evidence without discussion but it is not so fundamental as to affect the judgment if there is evidence to support the issue. It is open to the Court of Appeal to ascertain whether the conclusion of the District Court on an issue is supportable having regard to the evidence. I take the view that the learned Additional District Judge arrived at the correct conclusion that *Pina* was subject to Kandyan law and there is evidential basis, as I pointed out above, to buttress this conclusion.

In fact the Kandyan Succession Ordinance[11], another legislative enactment dealing with Kandyan law does indeed indirectly offer a definition of a Kandyan, although it does not expressly seek to do so. This Ordinance determines the status of the children of unions between Kandyan and non-Kandyans. The Ordinance does not use the term Kandyan, instead, it refers "to a man (or a woman) subject to the Kandyan law and

[11] No. 23 of 1917

domiciled in the Kandyan provinces." Hence by implication, the Ordinance appears to define Kandyans as persons who were subject to Kandyan law and domiciled in the Kandyan provinces. H.W. Tambiah (later a judge of the Supreme Court) commenting on this Ordinance states:-[12]

> "This piece of legislation.....does not settle the difficult and knotty point as to who a Kandyan is. It leaves the definition of the word Kandyan at large. The definition of a Kandyan as set out by this ordinance may be regarded as an *illustrio obscurio obscurio.*"

The learned Author and Judge conveys the idea by way of the Latin dictum that the illustrative definition in the Kandyan Succession Ordinance seeks to explain the obscure by means of the more obscure-the concept is expressed in another Latin maxim *obscurium per obscurius.*

But in fact in suggesting a definition in terms of domicile the formulation in Kandyan Succession Ordinance was useful. The evidence that transpired in the case on long and continuous residence in *Walapaluwa* on the part of generations of *Pina* is suggestive of the fact that *Pina* was indeed subject to Kandyan law. Even the interpretation section of the Ordinance[13] supports this conclusion as it states that the term 'domiciled *shall* be interpreted in the same manner as it would be interpreted if the Kandyan provinces constituted a separate country'.

There is also a more helpful test emanating from K. Balasingham[14] when he says that families who have long lived rooted to the soil of any province where the Kandyan law prevails, and speak the language, and follow the customs there prevailing may be regarded as Kandyans. In offering this more practical test I must say that Balasingham's test draws in aid the principle of inhabitancy. So when the 1st Plaintiff asserted that his father was subject to Kandyan law and that evidence was not shaken a wee bit, the

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[12] H.W. Tambiah, J. *Sinhala laws and Customs.* P 85.
[13] *Op.cit* Section 4 (1).
[14] Balasingham, *The Laws of Ceylon*, Volume 1, s 314, pp 205-206.

Defendant also confirmed that generations of *Pina* had lived rooted to *Walapaluwa*-an area in the District of Kurunegala where Kandyan law prevailed.

So I take the view that *Pina* was a man subject to Kandyan law and it was within his right to have exercised his right of revocation by VI and when he passed his title to the Plaintiffs by the subsequent deed bearing No. 221 and dated 09.06.1983, the transfer was validly and effectually executed. So the action for declaration of title was well founded.

In the circumstances I see no reason to disturb the conclusions reached by the learned Additional District Judge of *Kuliyapitiya* and I proceed to affirm the judgment dated 29th February 2000. Thus the appeal of the Defendant-Appellant is dismissed.

JUDGE OF THE COURT OF APPEAL