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

Sam Walgama,
Aluthnuwara Walauwwa,
Aluthnuwara.
Plaintiff

SC/APPEAL/172/2014
SP/HCCA/KAG/351/07(F)
DC KEGALLE 25806/P

Vs.

1. Kahandawa Arachchige Nevile Kumara Jayaratne, Nikapitiya.

2a. Denawatte Gedara Amurthhastha Mudiyanselage Samantha Bandara, Ussapitiya, Nikapitiya.

3. Denawatte Gedara Seneviratne, Nikapitiya.

4a. Kulatunga Mudiyanselage Nanda Peramuna, Nikapitiya.

5. P.P. B. Jayasekara, Nikapitiya Walauwwa, Ussapitiya.

Defendants

AND BETWEEN

Sam Walgama,
Aluthnuwara Walauwwa,
Aluthnuwara.
Plaintiff-Appellant

Vs.

1. Kahandawa Arachchige Nevile Kumara,
Jayaratne, Nikapitiya.

2a. Denawatte Gedara Amurthhastha
Mudiyanselage Samantha Bandara,
Ussapitiya, Nikapitiya.

3. Denawatte Gedara Seneviratne,
Nikapitiya.

4a. Kulatunga Mudiyanselage Nanda
Peramuna, Nikapitiya.

5. P.P.B. Jayasekara,
Nikapitiya Walauwwa, Ussapitiya.
Defendant-Respondents

AND BETWEEN

5. P.P.B. Jayasekara,
Nikapitiya Walauwwa, Ussapitiya.
5th Defendant-Respondent-Appellant

Vs.

Sam Walgama,
Aluthnuwara Walauwwa,
Aluthnuwara (Deceased).

Dombawala Pathirannehelage
Kusumawathie,
Colombo Road, Polgahawela.

Presently at: “Senasuma”,
Kudagalgamuwa, Kurunegala.
Substituted-Plaintiff-Appellant-Respondent

1. Kahandawa Arachchige Nevile Kumara Jayaratne, Nikapitiya.

2a. Denawatte Gedara Amurthhastha Mudiyanselage Samantha Bandara, (Deceased).

2aa. Denawatte Gedara Amurthhastha Senevi Abayakoon Mudiyanselage Maithri Bandara,
Nikapitiya, Ussapitiya.

Presently at:
148-15, Daisan-Ri, Jeanggwrn.Myeon,
Gijang.Gun, Busan, South Korea.

3. Denawatte Gedara Seneviratne, Nikapitiya.

4a. Kulatunga Mudiyanselage Nanda Peramuna, (Deceased)

4aa. Peramune Ralalage Shyama Kumari Peramune,
Udagedara Watta, Nikapitiya, Ussapitiya.
Defendant-Respondent-Respondents

Before: Hon. Chief Justice P. Padman Surasena
Hon. Justice Kumudini Wickremasinghe
Hon. Justice Mahinda Samayawardhena

Counsel: Rohan Sahabandu, P.C., with Chathurika Elvitigala, Sachini Senanayake and Pubudu Weerasuriya for the 5th Defendant-Respondent-Appellant.

Chamara Nanayakkarawasam for the Plaintiff-Appellant-Respondent.

Argued on: 30.10.2025

Written submissions:

By the 5th Defendant-Respondent-Appellant on 22.12.2025.

By the Plaintiff-Appellant-Respondent on 26.01.2026.

Decided on: 09.02.2026

Samayawardhena, J.

Introduction

The plaintiff instituted this action in the District Court of Kegalle twenty-four years ago, in the year 1992, naming four defendants, seeking partition of the land described in the schedule to the plaint between the plaintiff (½ share), and the four defendants (½ share). There is no dispute that the said land is depicted as Lots 1 to 4 in the Preliminary Plan No. 1228 marked X.

The 5th defendant intervened in the action after the preliminary survey. He filed a statement of claim praying, *inter alia*, for a declaration that he is entitled to Lot 2 of the Preliminary Plan by prescriptive possession.

After trial, the District Court held that the plaintiff had failed to establish title to the land. Accordingly, the land was partitioned between the 5th defendant (½ share) and the 1st to 4th defendants (½ share).

There is no dispute as to the manner in which the ½ share was allotted to the 1st to 4th defendants by the District Judge in the judgment. The dispute relates solely to the balance ½ share.

It is common ground that Piyadasa Bandara was, at one time, the original owner of the disputed ½ share of the land. There is no dispute that Piyadasa Bandara gifted his ½ share to Piyatissa by deed P1, which was subsequently revoked by deed P2. Piyadasa Bandara thereafter gifted the said share to Jayatissa by deed P3. Jayatissa, in turn, gifted the ½ share to Chandrasekera by deed P4, which was later revoked by

deed P5. Jayatissa thereafter gifted the same to the plaintiff by deed P6 dated 22.05.1982. The dispute concerns the validity of deed P6.

Although the 5th defendant sought, as substantive relief in the prayer to his statement of claim, a declaration that he was entitled to Lot 2 of the Preliminary Plan by prescriptive possession, he averred in paragraph 8 thereof that, subsequent to the execution of deed P6 dated 22.05.1982, Jayatissa transferred his ½ share to him by deed of transfer marked 5D2 dated 19.10.1986.

He further stated in paragraph 10 of the statement of claim that deed 5D2 took priority over deed P6 on the grounds that (a) deed P6 conveyed only undivided rights, whereas deed 5D2 conveyed the specific land in his possession, and (b) deed P6 was a deed of gift, whereas deed 5D2 was a deed of transfer. Paragraph 10 reads as follows:

> 10. පැමිණිල්ලේ 4 ඡේදයේ සඳහන් පරිදි ජයතිස්ස විසින් 1982.05.22 දින අංක 2732 දරණ තෑගි ඔප්පුවෙන් පැමිණිලිකරුට මෙම නොබෙදූ අයිතියක් දී ඇති බවත්, මෙම විත්තිකරු පිලිනොගන්නා අතර, එසේ දී තිබුනත්, එම ඔප්පුව නොබෙදූ දෙකෙන් කොටසකට දී ඇති බැවිනුත්, තෑගි ඔප්පුවක් බැවිනුත්, මෙම විත්තිකරුට දී ඇති ඔප්පුව විකුණුකරයක් බැවිනුත්, භුක්ති විඳින කොටසම දී ඇති බැවිනුත්, අංක 6803 දරණ විකුණුම්කරය පැමිණිකරුට දී ඇති තෑගි ඔප්පුව අහිබවා පවත්නා හෙයින් ජයතිස්සගේ සියලු අයිතිවාසිකම් 6803 දරණ විකුණුම් කරයෙන් 5 විත්තිකරුට තහවුරු වන බව තවදුරටත් මෙම විත්තිකරු ප්‍රකාශ කරයි.

The trial commenced on the 5th date of trial, namely 01.12.1998, with the recording of admissions and issues. The plaintiff, the 1st and 2nd defendants, and the 5th defendant raised issues at that stage. The 5th defendant raised only one main issue, namely whether he was entitled to Lot 2 of the Preliminary Plan by prescriptive possession.

The trial was thereafter postponed to 22.04.1999 for the leading of evidence. On that date, the further trial was again postponed to 28.10.1999. On the 8th date of trial, the 5th defendant sought to raise an additional issue on the basis that, since deed P6 was a deed of gift

whereas deed 5D2 was a deed of transfer, deed P6 was invalid. The additional issue so raised is as follows:

> 35. පැමිණිල්ලේ සඳහන් ආකාරයට ජයතිස්ස නමැති අය 1962.5.22 වෙනි දින දී ඇති අංක: 2732 දරණ තෑගි ඔප්පුව පසුව, එකී ජයතිස්ස විසින් 1986.10.19 වෙනි දින අංක: 6803 දරණ සින්නක්කර ඔප්පුව 5 වින්තිකරුට දී ඇති බැවින් ඉහත කී අංක 2732 දරණ තෑගි ඔප්පුව අවලංගු වන්නේද?
>
> 36. එසේ නම් පැමිණිලිකරුට මෙම ඉඩමේ අයිතියක් තිබේද?

However, no evidence was led and no submissions were made by the 5th defendant on the aforesaid basis. In fact, the 5th defendant contested the plaintiff's claim to the ½ share principally on the basis of prescriptive possession, which contention was rejected by the learned District Judge for cogent reasons. That finding has not been challenged before us.

Rejection of the deed of gift P6 is erroneous

Nevertheless, the learned District Judge rejected deed of gift P6, the plaintiff's title deed, on the ground that the said gift had not been accepted by the donee, the plaintiff. I have no hesitation in stating that this conclusion is wholly unwarranted for a number of reasons.

The 5th defendant did not plead in his statement of claim that deed of gift P6 was invalid on the ground that the gift had not been accepted by the donee. No issue was raised, either at the commencement of the trial or during the course of the trial on that basis, either by the 5th defendant or by the learned District Judge. The 5th defendant raised the additional issue seeking the rejection of deed P6 on a different ground, which was not pursued at the trial or thereafter.

Deed P6 was marked by the plaintiff in his evidence in chief without any objection. When the plaintiff closed his case reading in evidence deeds P1 to P6, no objection was taken regarding proof of the deeds.

In terms of section 68 of the Partition Law, there is no necessity to adduce formal proof of deeds in partition actions, except in specified circumstances. Section 68 of the Partition Law reads as follows:

> *It shall not be necessary in any proceedings under this Law to adduce formal proof of the execution of any deed which, on the face of it, purports to have been duly executed, unless the genuineness of that deed is impeached by a party claiming adversely to the party producing that deed, or unless the court requires such proof.*

To impeach the genuineness of a deed within the meaning of section 68 is to challenge the authenticity of the deed itself, such as by alleging forgery or fabrication, and not merely to dispute its legal effect or the rights claimed thereunder. A contention that a deed of gift was not accepted by the donee does not amount to an impeachment of the genuineness of the deed, but rather a challenge to the legal completion of the gift.

In a partition action, as in any other civil action, where a party seeks to challenge a notarially executed deed that has been pleaded, such challenge must be specifically pleaded, the grounds thereof particularised, and a corresponding issue raised, so that the party relying on the deed is clearly apprised of the aspect of the deed that is required to be proved. In the absence of such pleading and issue, when a pleaded deed is marked in evidence, the opposing party cannot merely rise and move that the deed shall be marked subject to proof.

I observe that, during the course of cross-examination before the District Court, certain questions were put to the plaintiff by learned counsel for the 5th defendant on the footing that deed P6 had not been accepted by the plaintiff, as he had not placed his signature on the face of the deed. In response, the plaintiff accepted that he had not signed the deed to signify acceptance, but explained that the donor, Jayatissa, was his uncle and that the land was gifted on the occasion of his marriage. The plaintiff further stated that he got married and that deed P6 was executed

on 22.05.1982, and that the deed was thereafter handed over to him by the donor.

The learned District Judge, in writing the judgment, has gone completely outside the case presented by the parties and stated that the plaintiff's version regarding acceptance of the deed is untenable because acceptance of the deed has not been corroborated by independent evidence. The evidence of the plaintiff was not led before the District Judge by whom the judgment was delivered. He has found fault with the plaintiff for not producing the original of deed P6 if the deed was delivered to him and for not producing the marriage certificate, if the land was gifted on the occasion of his marriage.

Except for deed P5, the plaintiff produced certified copies of the other deeds, including deed P6. Neither the learned District Judge nor learned counsel for the 5th defendant called upon the plaintiff to produce the original of deed P6 or any other deed, nor was the plaintiff questioned as to the non-production of the originals. By deed P6, the donor had gifted not only the land that is the subject of this partition action, but another land as well. There could therefore have been several acceptable reasons for the non-production of the original deed. Further, there was no requirement for the plaintiff to produce his marriage certificate to establish that the deed was executed on the occasion of his marriage, nor was he asked to produce the marriage certificate.

A Judge shall decide a case as it is presented before him by the rival parties, bearing in mind that the system of justice we practise is adversarial and not inquisitorial. Although section 149 of the Civil Procedure Code permits a District Judge to amend issues or to frame additional issues at any time before passing the decree, such discretion shall be exercised with caution and circumspection, particularly where the Judge, *ex mero motu*, seeks to raise an issue at the stage of writing the judgment. In the instant matter, the District Judge did not raise any such issue during the course of writing the judgment as contemplated

by section 149 of the Civil Procedure Code. No such issue is found in the judgment.

In the instant case there was no justification whatsoever to reject deed of gift P6 on the basis that it has not been accepted.

The order for retrial was unwarranted

On appeal preferred by the plaintiff, the High Court recognised the fundamental error committed by the District Judge. However, instead of setting aside that erroneous finding, the High Court proceeded to order a retrial for the purpose of affording the plaintiff an opportunity to establish that there had been a valid acceptance of deed P6. Such an order is wholly unacceptable. The ordering of a retrial in a partition action invariably causes untold hardship to all concerned, including judges, litigants, and witnesses, and should be resorted to only in exceptional circumstances. In the present case, both learned President's Counsel for the 5th defendant and learned counsel for the plaintiff accept that an order for retrial was unwarranted.

Appeal to the Supreme Court

Aggrieved by the judgment of the High Court, the 5th defendant preferred this appeal to this Court. On 24.09.2014, this Court granted leave to appeal against the judgment of the High Court on the following questions of law formulated by learned President's Counsel for the 5th defendant in paragraph 17 of the petition dated 24.12.2010.

(a) Is the judgment of the Civil Appeal High Court of Kegalle wrong in law?

(b) Has the Civil Appeal High Court of Kegalle erred in law in holding that the burden was on the defendants to raise a pleading or a point of contest that there was no valid acceptance of P6?

(c) Has the Civil Appeal High Court of Kegalle erred in law in failing to consider that since the plaintiff was claiming title under P6, the

burden was on the plaintiff to prove the necessary acceptance of P6 in order for the said gift to be completed?

(d) Has the Civil Appeal High Court of Kegalle erred in law in holding that the question of whether there was a valid acceptance of P6 was a matter outside the dispute presented to the court, on which the plaintiff had not been afforded a sufficient opportunity to adduce evidence?

For the reasons set out above, all those questions shall be answered in the negative.

Is acceptance of the gift necessary under the Kandyan Law?

At the argument before us, learned counsel for the plaintiff submitted that, in any event, since the parties to this action are governed by Kandyan Law, acceptance of the gift is not a prerequisite to its validity. Learned President's Counsel for the 5th defendant accepted that the parties are governed by Kandyan Law, but contended that, even under Kandyan Law, acceptance of the gift is necessary for its validity.

Accordingly, with the agreement of both parties, the Court raised the following questions of law in substitution of the questions of law previously formulated.

(a) Is acceptance of a gift necessary for its validity under the Kandyan Law?

(b) If the answer is in the affirmative, has the plaintiff proved that the plaintiff had accepted the gift P6?

(c) If the plaintiff has established the acceptance of the gift, does P6 prevail over the 5th defendant's title deed?

It is well-settled law that under Roman-Dutch Law, a donation is incomplete unless it is accepted by the donee. A donation is a contract which involves at least two parties and requires *consensus ad idem* between them. Acceptance of a deed of gift is not confined to the act of

signing the deed. Acceptance may be inferred from the subsequent conduct of the donor and the donee, as well as from the surrounding circumstances of the case. Further, acceptance need not necessarily be effected by the donee personally, as it may be made by another on behalf of the donee. The taking of delivery of the deed and entry into possession of the property are examples that may constitute proof of acceptance, notwithstanding the absence of an express acceptance on the face of the deed. In essence, the question of whether a gift has been accepted is not a matter of form, but of substance, to be determined on the facts of each case. (*The Laws of Ceylon* by Walter Pereira, 2nd Edition 1913, at pages 605-610)

There is a divergence of opinion as to upon whom the burden of proving acceptance of a gift lies. One view is that, as a natural consequence of ordinary human conduct, a deed of gift is presumed to have been accepted. Accordingly, the party who asserts that the gift was not accepted shall rebut the presumption. If the presumption is rebutted, the burden then shifts back to the party relying on the gift to establish acceptance on the balance of probabilities. The ultimate decision as to acceptance shall depend on the totality of the evidence.

This approach finds support in the case of *Hendrick v. Sudritaratne* [1912] 3 Court of Appeal Cases in Ceylon 80 at 81, where Lascelles C.J., with the concurrence of Wood Renton J., observed:

> *There is, I think, a natural presumption in all these cases that the deed is accepted. Every instinct of human nature is in favour of that presumption, and I think that, where a valuable gift has been offered, and it is alleged that it has not been accepted, some reason should be shewn for the alleged non-acceptance of the gift.*

The converse view is that the party who relies on a deed of gift shall affirmatively prove acceptance. This view has found expression in several decisions, including the judgment of Gratien J. in *Caffoor v. Hamza* (1956) 58 NLR 33 and that of L. H. De Alwis J. in *Abubucker v. Fernando*

[1987] 2 Sri LR 225. That line of authority is founded on the general principle embodied in section 101 of the Evidence Ordinance that he who asserts must prove. This view shall be understood subject to the well-established principle that there is no general requirement to formally prove every deed marked in evidence unless the opposite party challenges its validity on specific grounds.

If the former view is adopted, the 5th defendant has failed to rebut the presumption of acceptance. Even if the latter view is adopted, the burden would arise only where the 5th defendant has, in the first place, raised a specific issue challenging the genuineness or otherwise of the deed. In the present case, no such issue was raised. In my view, the 5th defendant fails in either way.

Learned counsel for the plaintiff, drawing the attention of Court to section 2 of the Kandyan Law Declaration and Amendment Ordinance No. 39 of 1938, submits that acceptance is not a requirement for the constitution of a valid gift under Kandyan Law, as no such requirement is expressly stated in the statute. There is great force in this argument.

In section 2 of the Ordinance, a "gift" is defined as "*a voluntary transfer, assignment, grant, conveyance, settlement, or other disposition inter vivos of immovable property, made otherwise than for consideration in money or money's worth*". The Ordinance does not prescribe acceptance by the donee as a statutory requirement for the validity of a deed of gift. The Ordinance is primarily concerned with the donor's right of revocation and the limited circumstances in which that right is excluded.

Learned counsel for the plaintiff further relies on the authoritative work on Kandyan Law by Frederic Austin Hayley, *A Treatise on the Laws and Customs of the Sinhalese including the portions still surviving under the name Kandyan Law*, in support of his contention, where the learned author states at pages 305-306:

> *Gifts of land and goods have always been common. The donees are usually close relations of the donor, but not necessarily so. Notoriety being of the essence of the transfer, there was no place for any requirement of acceptance by the donee, such as exists in Roman Dutch Law.*

However, learned President's Counsel for the 5th defendant draws the attention of Court to the two sentences that immediately follow the above passage, wherein Hayley observes:

> *But it has been held that delivery is necessary for the completion of a modern grant (Sapalhamy v. Kirry Ettena (1844) Morg. Dig. 373; Punchi Nileme v. Dingiri Etena, 3 Leader (3), 6). A duly executed and delivered deed of gift vests title immediately (Mudelitamby v. Aratchille (1849) Morg. Dig 441).*

On this basis, learned President's Counsel submits that, even according to Hayley, acceptance of the gift is necessary for its completion.

In the instant case, none of the deeds of gift tendered by the plaintiff, including Jayatissa's title deed of gift P3, which is relied upon by both parties, contains any express acceptance of the gift on the face of the deed. No party has raised any issue in this regard, possibly because acceptance is not generally regarded as a mandatory requirement under Kandyan Law. However, that flexibility does not warrant the conclusion that acceptance is unnecessary under Kandyan Law for the completion of a valid gift.

This necessitates an examination of how Courts have looked at this question. Although I was unable to find a decision in which acceptance was examined as a separate issue, a consideration of the decided cases reveals that, notwithstanding the absence of an express statutory provision, our Courts have nevertheless recognised acceptance, albeit indirectly, as a requirement for the completion of a gift even under Kandyan Law.

In *Sapalhamy v. Kirry Ettena* (1844) Morgan Digest 373, referred to by Hayley, it was held:

> *Until proof on both sides has been gone into as to the execution of these Grants, and it be shewn whether they were delivered or not to the donee, and whether the donees were put into the immediate possession of the land granted thereby, this Court cannot, in the present stage of the suit, give any definite opinion as to what is the legal effect of these deeds.*

In *Mudiyanse v. Banda* (1912) 16 NLR 53 at 55, Walter Pereira J. stated:

> *The Kandyan law, pure and simple as it seems to me, is that, subject to one or two exceptions which are not worth noticing here, a deed of gift, that is to say, a deed to constitute a donation, and which is intended by the donor to operate as a donation, and is accepted by the donee as such, whatever the motive for the deed may be, is revocable (see Armour's Grammar of the Kandyan Law 90).*

In *Jayathilaka v. Siriwardena* (SC/APPEAL/221/2012, SC Minutes of 19.12.2019), Amarasekera J. referred to the above passage in deciding the issue of revocation of a Kandyan gift.

In *Dullewe v. Dullewe* (1968) 71 NLR 289, where parties were governed by Kandyan Law, the Privy Council referred to the gift in question as having been "perfected by acceptance". Lord Hodson at page 290 observed:

> *It is to be noticed the gift of the lands effected by this deed was expressed to be irrevocable although subject to a condition as expressed. The gift was perfected by acceptance and was properly described as a "Kandyan" gift. No question arises as to its validity.*

In *Ratnayake v. Bandara* [1990] 1 Sri LR 156, acceptance was not argued as an issue before the Supreme Court. The Court merely recorded as an admitted fact that "*The gift was accepted by the donee*."

However, in *Menika v. Menika* (1923) 25 NLR 6 at 9, Schneider J. rejected a deed of gift, *inter alia*, on the basis that *"The deed P1 is a donation. It is not accepted by the donees on the face of it"*, and that there was no evidence of acceptance. Jayewardene A.J., who was the other Judge on the same Bench, while concurring in the final conclusion reached by Schneider J., expressed reservations at page 10 in the following terms: *"I am, however, somewhat doubtful whether under the Kandyan Law, a deed of gift, such as the one produced in this case, P1, requires acceptance either on the face of it or otherwise."*

However, in *Ukku Banda v. Paulis Singho* (1926) 27 NLR 449 at 454, Jayawardene A.J. quoted with approval the following statement of the general rule of Kandyan Law as found in *Simon Sawers' Digest*.

> *The general rule of Kandyan law is thus stated by Sawers:-*
>
> *"All deeds of gift, excepting those made to priests and temples, whether conditional or unconditional, are revocable by the donor in his lifetime, but <u>should the acceptance of the gift involve the donee in any expense</u>, he, the donee, must be indemnified, on the gift being revoked, to the full amount of what the acceptance of the gift may have cost him, either directly or by consequence, but this rule applies only to gifts made by laymen. …"*

This statement indirectly recognises that acceptance of a gift was not an unknown concept under Kandyan Law. The same passage is reproduced in *Armour's Grammar of the Kandyan Law* by Joseph Martinus Perera (1860) at page 90. It was also quoted by Akbar J. in *Tikira v. Tikira* (1929) 30 NLR 435 at 438 and by Wendt J. in *Tikiri Kumarihamy v. De Silva* (1906) 9 NLR 202 at 210 when deciding the question of the revocability of a Kandyan gift.

Further, in *Komalie v. Kiri* (1911) 15 NLR 371 at 374, Middleton J. indirectly recognised the concept of acceptance of a Kandyan deed when he observed that "*the document is registered, stamped, and numbered as a deed, and bears on the face of it an acceptance by the donee, and calls itself a deed of gift.*"

The following passages found at pages 96-97 of *Armour's Grammar of the Kandyan Law* by Joseph Martinus Perera (1860) lend support to the view that acceptance of a gift under Kandyan Law need not necessarily be formal or express, but may be inferred from conduct.

> *A deed of gift will be valid and of avail to the Donee, although he had not entered into possession of the property prior to the Donor's demise—thus, if the proprietor executed a deed which purported that he gave a portion of his landed estate to the Donee on condition of being assisted and supported during the remainder of his life, and if the Donee (whether he were a relation or a stranger) did then receive the Donor into his house and did afford him assistance and support until his death. In such case he the Donee will have acquired a perfect right to that portion of land and his claims thereto will not be frustrated although the entire estate has remained in possession of the deceased's heirs for some years after his demise.*
>
> *A deed of gift, perfected by the Donee having fulfilled the conditions thereof, and by his having entered into possession of the property therein specified, cannot be revoked by any oral declaration of the Donor—thus for instance if the proprietor executed a deed, and thereby made over a part of his lands in consideration of the assistance he had already received and of the assistance he should continue to receive, from the Donee—and if the Donee did render adequate assistance to the Donor, considering the value of the gift, in that case a mere verbal declaration made by the Donor on his death bed; that it was his will that that gift should be revoked and*

that all his lands should devolve to his child, will not have the effect of annulling that deed of gift.

A Deed of Gift or of Bequest, for landed property, will be valid, although the Deed was not delivered to the party in whose favour it was executed, but was entrusted to the care and custody of some other person, provided that the donee was in the life time of the doner put in possession of the property, or that he or she performed the conditions stipulated in that Deed.

The last passage was reproduced by Frank Modder in *The Principles of Kandyan Law*, 2nd Edition 1914, at page 106.

Having considered the statutory framework, the classic texts, and the decided cases, I am of the view that, while Kandyan Law does not require acceptance in the formal or technical sense known to Roman-Dutch Law, acceptance is nevertheless an element for the completion of a valid gift under Kandyan Law.

In the instant case, even in the absence of a specific issue having been raised, the plaintiff, in answer to questions put to him as noted earlier, stated that the donor was his uncle, that deed P6 was executed on the occasion of his marriage, and that the deed was delivered to him by the donor. The 5th defendant did not adduce any evidence to the contrary. On the facts and circumstances of this case, this evidence sufficiently establishes that the gift was accepted by the donee.

In terms of section 4(2) of the Kandyan Law Declaration and Amendment Ordinance, the revocation of a deed of gift effected on or after 1st January 1939 shall be made by the donor during his lifetime and in accordance with the provisions of the Prevention of Frauds Ordinance, generally by a notarially attested deed. Deed P6 was not revoked by Jayatissa prior to his subsequent execution of deed 5D2. Consequently, deed 5D2 is devoid of legal validity.

Conclusion

I accordingly answer the three questions of law raised by this Court on 30.10.2025 in the affirmative.

I set aside the judgment of the High Court insofar as it set aside the judgment of the District Court and ordered a trial *de novo*.

I affirm the judgment of the District Court subject to the following finding: the plaintiff is entitled to an undivided ½ share of the land by virtue of deed P6, and the 5th defendant is not entitled to Lot 2 of the Preliminary Plan by deed 5D2 or by prescription.

The learned District Judge shall enter the interlocutory decree accordingly.

The plaintiff is entitled to costs in all three Courts, recoverable from the 5th defendant.

Judge of the Supreme Court

P. Padman Surasena, C.J.
I agree.

Chief Justice

Kumudini Wickremasinghe, J.
I agree.

Judge of the Supreme Court