

1896.
July 17.

ALLIS v. BABUNHAMY et al.

D. C., Galle, 3,045.

Civil Procedure Code, ss. 51 and 54—Document “relied on”—Its admission in evidence.

Where in an action to be declared entitled to certain land the plaintiff omitted to enter his title deed in a list of documents annexed to the plaint, but filed it with his plaint, held, that the defendant was in no way prejudiced by the omission, and that the District Judge should have exercised the discretion given to him by section 54 of the Civil Procedure Code in the plaintiff's favour, and admitted the deed in evidence.

THE facts of the case sufficiently appear in the judgment.

Asserappa, for appellant.

17th July, 1896. LAWRIE, J.—

The learned District Judge has dismissed the action on a technical and, I think, an unreasonable ground.

The plaintiff claims to be owner of a land. He filed his title deed with his plaint. He did not enter it in a list annexed to the plaint. When the first witness was under examination he proposed to produce this title deed. The production was objected to, and the learned District Judge refused to exercise the discretion given to him by the 54th section. The defendant was in no way prejudiced by the omission to include this title deed in a list.

The plaintiff gave fuller notice of the title deed than he was obliged to give. All he need have done was to state its number and date in a list, and to produce it at the trial. He filed his title deed with the plaint, so giving the defendant fuller notice and information than the law required.

I would set aside, and would send the action back for trial in due course.

WITHERS, J., agreed.