

1958

Present : Basnayake, C.J., and Sansoni, J.

DAVITH APPUHAMY, Appellant, and PEDURU NAIDE, Respondent

*S. C. 31 Inty.—D. C. Kurunegala, 8437/P**Appeal—Arbitration by Court—Right of appeal.*

Where, in an action relating to a land, the parties agreed to be bound by the order which the Court would make after inspection of the land, without any evidence being recorded—

Held, that the order of the Court made in accordance with the agreement could not be appealed from.

APPEAL from an order of the District Court, Kurunegala.

D. C. W. Wickremasekera, for 1st Defendant-Appellant.

Felix Dias, with *N. R. M. Daluwatte*, for Plaintiff-Respondent.

July 21, 1958. BASNAYAKE, C.J.—

In this action the parties invited the Court to inspect the land. The relevant portion of the journal entry of 28.9.56 reads—

“ All parties desire the court to inspect the land and to give a decision without any evidence being recorded. They also agree to be bound by the order the court will make after the inspection.

On this specific undertaking given by all parties I consent to inspect this land. Inspection on 2.10.56. These terms are notified to all the parties who accept them by signing the record.”

It would appear from the following journal entry of 18.1.57 that the inspection did not take place on 2.10.56 for some reason which does not appear on the record and that after obtaining the fresh consent of the parties the Court fixed another date for inspection.

“ Parties agree that the Court should inspect on the same terms agreed to by them on 28.9.56. An inspection is fixed for 21.1.57 subject to the weather being fair.”

After inspection the learned District Judge made his order. This appeal is from that order.

A preliminary objection is taken to this appeal on the ground that no appeal lies from the order appealed from. Learned counsel cites in support of his objection the cases of *Babunhamy v. Andris Appu*¹ and *Gunaratne v. Andradi*². We are in entire agreement with the decisions cited by counsel.

We therefore uphold the preliminary objection and reject the appeal with costs.

SANSONI, J—I agree.

Appeal rejected.

¹ 5 *Balasingham's Reports* p. 89.

² 3 *Court of Appeal Cases* 69.