1908.
September 24.

Present : Mr. Justice Wood Renton and Mr. Justice Wendt.

PERERA *v.* AVISHAMY *et al.*

D. C., Kalutara, 3,621.

Documents, proof and identification of—" Documents put in "—Irregularity—Civil Procedure Code, ss. 111–114.

In putting documents in evidence in a case the provisions of sections 111–114 of the Civil Procedure Code ought to be observed. It is irregular simply to say " Documents put in."

APPEAL from a judgment of the District Judge of Kalutara.

Bawa, for the defendants, appellants.

H. J. C. Pereira, for the plaintiff, respondent.

September 24, 1908. WOOD RENTON J.—

* * * * *

The irregular manner in which the proceedings were conducted in the Court below renders it difficult to do justice to the parties in this case. In defiance of the express provisions of the Civil Procedure Code (sections 111–114) as to the mode in which documentary evidence is to be proved or admitted and identified, the Judge merely makes the following journal entry at the close of the respondent's case :—" Documents put in," without a word to indicate what documents are referred to. In spite of the express condemnation of the practice by this Court in S. C. No. 292, D. C., Kalutara, No. 2,911[1]—a condemnation endorsed by Middleton J. in 96, C. R., Colombo, 3,304[2]—the learned Judge, after both sides had closed their respective cases, proceeded to give the appellants' proctor an opportunity of explaining the deed of transfer (P 5) dated February 13, 1903, of William's share by John Wickramaratne to the sixth defendant-appellant, and, if necessary, of examining the vendee. He further called for his own information for one deed recited in P 1, and permitted the respondent's proctor to file an additional list of documents, containing the deeds P 6, P 9, P 10, to which he refers in the judgment. So far as I can make out from the record, both P 5 and the assessment receipts P 9 and P 7 were put in *en bloc* at the close of the respondent's case. Speaking for myself, I desire to say that proceedings of this description are worse than irregular. They are positively unjust

[1] *S. C. Min., June 4, 1907.* [2] *S. C. Min., September 17, 1907.*

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to both sides. They directly tend to encourage appeals from the learned Judge's decisions, and make the task of the Appeal Court, in endeavouring to arrive at a sound conclusion, needlessly laborious.

In the present case, however, I am, with some hesitation, of opinion that the appeal should be dismissed. If the evidence on which the learned District Judge relied, and which I have already summarized, may fairly be taken account of, it is undoubtedly sufficient to support his decision. I think that the appellants were not taken unaware by, and that they must be held to have acquiesced in the admission even of the evidence which was legally exceptionable. The respondent in his evidence (Record P 25) distinctly called their attention to the fact that efforts had been made to get the assessment receipts. His witnesses, John William Perera (Record P 38) and Hendrick Perera (Record P 39), alleged in terms that receipts had been given to Panis. The fifth defendant-appellant traversed this allegation stating (Record, pages 53, 55) that Thelenis paid the rates, and that she herself held all the assessment receipts, none of which, however, she produced. No objection appears to have been taken by the respondent's proctor either to the admission of these receipts or to the sufficiency of their identification with the land and with Panis. The additional list of documents filed by the respondent's proctor after the close of the case was duly notified to, and bears the signature of, the proctor for the appellants, who himself took advantage of the re-opening of the proceedings by the learned District Judge to file the plaint in the partition case D. C., Kalutara, No. 3,519 (which Mr. Bawa made a faint attempt, on the argument of the appeal, to induce us to regard as laying the foundation for a plea of *res judicata* against the respondent), and apparently addressed the Court again before judgment was delivered.

On the grounds I have indicated, I would dismiss the appeal with costs.

Appeal dismissed.