

1960 Present : Basnayake, C.J., and H. N. G. Fernando, J.

D. L. L. APPUHAMY, Appellant, and K. APPUSINGHO and another.
Respondents

S. C. 17 (Inty.)—D. C. Kandy, 4843

Partition action—Listing of documents—Cross-examination of party—Admissibility of a document not included in the list of documents filed—Partition Act, No. 16 of 1951, s. 19 (2) (a).

A document which has not been listed in accordance with the requirements of section 19 (2) (a) of the Partition Act is nevertheless admissible in evidence for the purpose of cross-examining a party in order to contradict him with a former statement made therein by him inconsistent with his evidence.

APPEAL from an order of the District Court, Kandy.

L. W. de Silva, with *D. C. W. Wickremasekera*, for 2nd Defendant-Appellant.

N. E. Weerasooria, Q.C., with *N. R. M. Daluwatte*, for Plaintiff-Respondent.

December 14, 1960. BASNAYAKE, C.J.—

The question for decision in this appeal is whether the District judge was right in upholding the objection to the cross-examination of the plaintiff on the ground that the document with which counsel sought to contradict him when giving evidence was not listed in accordance with the requirements of section 19(2)(a) of the Partition Act No. 16 of 1951. That provision reads —

“ Every party to the action shall, not less than thirty days before the date of trial of the action, file or cause to be filed in court a list of documents on which he relies to prove his right, share or interest to,

of or in the land together with an abstract of the contents of such documents. No party shall, except with the leave of the court which may be granted on such terms as the court may determine, be at liberty to put any document in evidence on his behalf in the action if no such list as aforesaid has been filed by or on behalf of him in court, or if that document is not specified in a list so filed, or if an abstract of the contents of that document has not been so filed.”

In the instant case counsel was seeking to produce the proceedings in a previous case not in order to prove the rights or interests of the party whom he represented in the land sought to be partitioned but to contradict the witness with a previous statement made on oath in another legal proceeding. If the cross-examination of the witness had been permitted and the proof which learned counsel sought to adduce was allowed it would have shown that the witness was not as reliable as the learned Judge thought he was for he says in his judgment referring to that witness —“ I was impressed with the evidence of the plaintiff in this case. There is definitely a ring of truth in his evidence.” Now it was this very thing that learned counsel sought to negative, viz : that the plaintiff was speaking the truth.

Learned counsel for the respondent does not seek to support the order of the learned District Judge. He was wrong in ruling that counsel was not entitled to prove former statements by the witness inconsistent with his evidence in the instant case or contradict him with statements relevant to the matters in question made in previous legal proceedings unless the documents used for the purpose of cross-examination were included in the list filed under section 19 (2) (a).

We set aside the judgment and direct that the case be sent back for a trial *de novo*. The appellant is entitled to the costs of the appeal and to the costs in the lower court which we limit to the costs of the trial.

H. N. G. FERNANDO, J.—I agree.

Order set aside.