

1930

*Present : Akbar J.*SADRIS APPU v. PIYARATNE
TERUNANSE.103—*C. R. Tangalla*, 12,480.*Document—Tendered in cross-examination of witness—Omitted from list of documents—Court's power to reject—Civil Procedure Code, s. 820 (2).*

In the Court of Requests, a document may be rejected on the ground that it has not been listed in terms of section 820 (2) of the Civil Procedure Code, even though it may have been tendered without objection in the course of the cross-examination of a witness of the opposite party.

A PPEAL from a judgment of the Commissioner of Requests, Tangalla.

H. E. Garvin, for first defendant, appellant.

E. B. Wikramanayake, for plaintiff, respondent.

September 10, 1930. AKBAR J.—

In this action the plaintiff who held a lease from the second defendant, trustee of a vihare, sued the incumbent of the vihare and the trustee for a declaration that the plaintiff is entitled to possess the leased premises for the remaining portion of the lease and for damages. Only the first defendant appeals, the

action against the second defendant having been dismissed with costs. There were three issues in this case—namely, (1) Is this action maintainable? (2) Has this Court jurisdiction? and (3) Is the second defendant duly appointed trustee of Kudavihare temple?—and the learned Commissioner gave judgment for the plaintiff for Rs. 200 and costs as against the appellant. The appeal was pressed on the footing that the lease was invalid on two grounds, namely, that the trustee was not duly appointed, and, secondly, that the lease was invalid as the provisions of section 27 and 31 had not been complied with. Mr. Ratnatunga, the president of the district committee, under the Buddhist Temporalities Ordinance, and a proctor practising in Tangalla, was called as a witness for the plaintiff, and, during the course of his cross-examination, the document 1D1 was shown to him, the object being to prove that the appointment of the trustee, Matheshamy, *i.e.*, the trustee who preceded the second defendant, and who had been appointed in 1925, was good and that the appointment of the second defendant as trustee in July, 1927, was an invalid appointment in view of section 17 of Ordinance No. 8 of 1905. Under section 17 a trustee is to be elected for a term of three years. When the plaintiff's case was closed the proctor for the first defendant called no evidence, and on objection taken by the plaintiff's counsel to document 1D1 on the ground that it had not been listed in the list of documents of the defendant, the learned Commissioner refused to admit the document and also refused to allow the motion of the first defendant's counsel for special leave to put in the document under section 820 (2) of the Civil Procedure Code.

It is argued by Mr. Garvin that the document 1D1 was put in evidence when it was shown to the witness Ratnatunga and that the Court had no power to reject it when the first defendant's counsel moved

to put it in later formally in evidence. Under section 820 (2) of the Civil Procedure Code the parties must file a list of documents and "no document shall be received in evidence at the trial without the special leave of the Commissioner unless the description of such document appears in such list". It is admitted that this document was not listed, and the explanation in section 154 states, "If the opposing party does not, on the document being tendered in evidence, object to its being received, and if the document is not such as is forbidden by law to be received in evidence, the Court should admit it". At the time 1D1 was tendered to Mr. Ratnatunga it was not objected to by the plaintiff's counsel, but it is also clear that the attention of the Court was not directed to the fact that the document was not listed.

Under section 820 (2) there is an absolute prohibition against the receiving in evidence of an unlisted document without the special leave of the Commissioner. So that under section 154, the Court had, I think, power, when its attention was called to the fact that the document was not listed, to rule the document out, and I cannot say that the Commissioner was wrong in not allowing special leave under the sub-section. In all the circumstances I am of opinion that the document was rightly rejected. The third issue deals directly with this point, and the first defendant's counsel, if he relied on 1D1, should have listed this document. Even after this document was ruled out counsel for the first defendant did not lead any evidence.

As regards the second point taken by Mr. Garvin, namely, that the lease was invalid for want of the certificate showing the sanction of the district committee for the lease in terms of section 27 of Ordinance No. 8 of 1905, there was no direct issue on the point. Further, I am of opinion that the document P4 was a sufficient compliance of section 27. P4 is headed as coming from the district

committee of the Buddhist Temporalities of Hambantota. It is signed by Mr. Ratnatunga as president of this district committee, and it authorizes the trustee, namely, the second defendant, to execute the deed of lease in question. I fail to see how it can be urged that this document is not a certificate under the hand of the president certifying that sanction has been given by the district committee. Though at one time I was greatly impressed by the arguments of Mr. Garvin, I think in all the circumstances of the case the judgment is right, and I would therefore dismiss the appeal of the first defendant-appellant with costs.

Appeal dismissed.

