

1945

Present: Soertsz A.C.J. and Jayetilleke J.

RANATUNGE *et al.*, Appellants, and JOHN PERERA,
Respondent.

165—D.C. Negombo, 12,656.

Appeal Court—Judgment for plaintiff based on demeanour and declaration of a witness in the witness-box—Other facts contradictory of the declaration—Appeal Court can set aside the trial Judge's finding of fact.

Where the trial Judge, relying on the demeanour of a witness and a declaration made by her in the witness-box, entered judgment for the plaintiff,—

Held, that the Appeal Court could set aside the finding of fact if all the other known facts contradicted the declaration of the witness.

A PPEAL from a judgment of the District Judge of Negombo.

A. J. J. Raj Chandra, for the defendants, appellants.

N. E. Weerasooria, K.C. (with him *Naina Marikar*), for the plaintiff, respondent.

Cur. adv. vult.

December 18, 1945. SOERTSZ A.C.J.—

The plaintiff-respondent, relying on two deeds of transfer in his favour, dated April 4, 1943, and June 23, 1943, instituted this action against the fourth defendant and his two minor children, the first and second defendants, represented by their guardian *ad litem*, the third defendant, for declaration of title to a field called Meddekumbura said to be of the value of Rs. 500.

Admittedly, this field belonged to one Somas Singho and the plaintiff's vendors are his widow, Lianchi Nona, and his children by her. The fourth defendant is the son of Somas Singho by a woman with whom he lived before he married Lianchi Nona.

The fourth defendant's case was that Somas Singho made him a verbal gift of this field and of a high land and that ever since the death of Somas Singho who died over thirty years ago, he has been in possession of those lands in a manner that served to give him a prescriptive title thereto. The fourth defendant, in manifestation of the verbal gift he set up, produced the original title deeds to these two lands. All the other lands which Somas Singho died possessed of have been dealt with and disposed of by his widow and legitimate children. There is thus an antecedent probability that there was such a gift as the fourth defendant asserted, but ultimately the question is whether the fourth defendant's possession was adverse and gave him a prescriptive title. Lianchi Nona who was a witness for the plaintiff declared that the fourth defendant was no more than a caretaker of these lands and that she, herself, used to come to this village from the village of Bopitiya, some ten or fifteen miles distant, where she had gone to reside and take her share of the produce.

The learned trial Judge accepted this evidence and found for the plaintiff. Mr. Weerasooria, on behalf of the plaintiff, contended with great force that this was a definite finding of fact and that we should not disturb it. No doubt, it is true that an Appeal Court should be very slow to upset findings of facts, but, in this instance, I am strongly of the opinion that, if the trial Judge had considered the evidence carefully, he would have seen that, whatever the demeanour of Lianchi Nona in the witness-box might have been when she stood in it and declared that she came regularly and took her share of the produce, all the other known facts shouted in contradiction of her declaration. I will not make a point of the fact that the picture of this woman some sixty years of age coming regularly a distance of some ten miles and carrying back over that distance a half share of the paddy threshed on the field appears to be pathetically imaginary. Her son, Podiappuhamy, had come to Court but refrained from going into the witness-box to support her. The two witnesses called to support her were Allis Perera and the Village Headman of Ioluwagoda. The former, although he repudiated the suggestion

that he was Lianchi Nona's carter, admitted that he had "done contract work for her" and the latter who does not appear to have been able to screw his courage to the sticking point ended only by damning her case with faint praise, for he had to admit that in the field enumeration list he prepared, he gave the fourth defendant as the owner of the field.

On the other hand, the evidence of the fourth defendant and of the Vel Vidane who would know all about the possession of this field is very convincing. It seems quite clear that Somas Singho's widow and children sold all their lands in this village and went and lived in distant places, till the plaintiff, who owns the fields adjoining this field, in search of other fields to conquer, sought them out and interrupted the even tenor of their lives and, offering something for nothing, obtained these transfers. I would set aside the judgment given in the Court below and dismiss the plaintiff's action with costs in both Courts.

JAYETILEKE J.—I agree.

Appeal allowed.
