WIJESURIYA
v.
SENARATNE

COURT OF APPEAL.
F. N. D. JAYASURIYA, J.
C.A. 27/91.
A.T. KURUNEGALA 1 C401.
JANUARY 28, FEBRUARY 3 AND 20, 1997.

Agrarian Services Act, No. 58 of 1979 – Tenant cultivator – Eviction by order of Court – Custodia Legis – Eviction – Prevention of Frauds Ordinance, section 2 – Civil Procedure Code, section 154 – Improper admission of evidence – Evidence Ordinance, section 3 – Question of law.

The complaint of the applicant-respondent was to the effect that his father was the original tenant and subsequently the applicant's uncle, and the applicant were the *Ande* cultivators, and that the respondent-appellant after purchasing the interests in the field by two conditional transfers wrongfully evicted him.

It was contended in appeal that the transaction embodied was a money lending transaction or a Moratuwa Mortgage or creating merely a relationship of creditor and debtor and in any event there was no eviction as contemplated under the Act, as the District Court had prohibited both parties from cultivating the field and had handed over the field to an official of the Agricultural Committee.

Held:

(1) Any contract relating to land or creating an interest in land ought to be Notarially executed and oral and parol evidence cannot be led to alter and vary the terms of the transaction so recorded in the Notarially executed document. Thus in the absence of a plea of fraud or trust the transaction embodied in the two deeds (V2 and V3) is an absolute transfer subject to an agreement to re-convey within a specified and fixed period of time.

Thus it is not open to the respondent-appellant to construe and interpret the transaction embodied in V2 and V3 as a money lending transaction or as a Moratuwa Mortgage or creating a creditor-debtor relationship.

(2) On perusing the part of the record tendered it is seen that the learned District Judge did not have jurisdiction to grant the plaintiff in that action reliefs which were not prayed for in the prayer to the plaint. The record discloses that the

action that was filed is not an action for declaration of title or an order of ejectment of the defendants and for an order of delivery of possession, **but** an action for declaration to be quieted in possession.

The respondent appellant did not obtain possession in terms of the judgment after he obtained judgment, the respondent-appellant had used his own devices and contrivances to obtain possession from the Waga Niladari.

APPEAL from the order of the Assistant Commissioner of Agrarian Services, Kurunegala.

Cases referred to:

1. *W. N. William Fernando v. W. D. Saranelis* – 59 NLR 169.
2. *H. W. H. Siriwardena v. W. D. Saranelis* – 59 NLR 182.
3. *Elderick de Silva v. Chandradasa* – 70 NLR 168 at 170.
4. *Tillekaratne Banda v. Kalu Banda* – [1993] 1 SLR 95.
5. *D. M. Ariyaratne v. S. Edwin* – 68 NLR 470 at 471.
6. *Babanis v. Jemma* – [1981] 2 SLR 344.
7. *Karawita v. Abeyratne* – [1983] 2 SLR 306.
8. *Manatunga v. Baronchihamy* – [1995] 1 SLR 45.
9. *Silva v. Kideerslay* – 18 NLR 85.
10. *Adaikappa Chettiar v. Thomas Cook & Sons* – 31 NLR 385.
11. *Perera v. Seyed Mohamed* – 58 NLR 246.

Mahinda Ralapanawa with *S. Balasuriya* for respondent-appellant.

H. K. C. de Alwis for appellant-respondent..

Cur. adv. vult.

March 10, 1997.

F. N. D. JAYASURIYA, J.

The paddy field, which is the subject matter of this application named Wewekumbura alias Weweliyadde, is situated at the extremity of the two adjacent villages of Mabopitiye and Humbuluwa in the District of Alawwa, Dambadeniya. As the paddy field is situated at such extremity, it is described by some as being situated in

Humbuluwa and by others as situated at Mabopitiya. Concerted issues have been raised at the inquiry in regard to the name of the paddy field but it is common knowledge in the villages that a paddy field is described sometimes as "kumbura" and sometimes as "Liyadde". I agree with the Inquiring Officer that on the totality of the evidence placed before him, the reference to Weweliyadde and Wewekumbura are references to one and the same paddy field. Witness Yalabamunu Kasthurusinghe who had officiated as the Waga Niladhari has clearly stated that although he had earlier inserted two registration entries in the Agricultural Lands Register in respect of Wewekumbura and Weweliyadde on the mere representations of the party litigants, yet subsequently, in 1979, he was convinced and satisfied on investigation that both these names related to one and same paddy field and that this particular paddy field was cultivated as ande cultivators by Adikari Mudiyanselage Dingiri Banda and later by A. M. Senaratne, the applicant. It is in evidence that there was no definite boundary separating the villages of Humbuluwa and Mabopitiye. I am in complete agreement with the findings of fact reached by the Assistant Commissioner of Agrarian Services that though different names and different villages were used in the description. that the disputes between the parties related to one paddy field which was identified in relation to metes and bounds and as the respective party litigants used the different names of Wewekumbura and Weweliyadde that different entries with different names were inserted in the Agricultural Lands Register without any investigation [on the mere representation of the parties concerned] by officials in regard to the identity of the paddy field. In fact, the official witness Kasthurusinghe summoned to give evidence at the inquiry, who was the Waga Niladhari, accepted the fact that in view of the representations of either party litigant naming this paddy field differently, on their representation, without further investigation, entries have been made and registrations effected as if there were two fields named Wewekumbura and Weweliyadde in existence in the particular district. But, in actual fact, both these descriptions related to one particular paddy field identified by clear metes and bounds and that the respondent-appellant Jamis Appuhamy Wijesuriya was the owner of that solitary paddy field. The witness

named Gamaralalage Kalinga Senadheera Appuhamy who was the District Agrarian Services Officer, has confirmed this fact.

The complaint of the applicant-respondent to the Assistant Commissioner of Agrarian Services (Inquiries), Kurunegala was to the effect that his father A. M. Tikiri Banda was the original ande cultivator of the paddy field named Wewekumbura alias Weweliyadde, in extent 3 roods of paddy sowing which was situated in the village of Humbuluwa in Alawwa, in the District of Dambadeniya and thereafter that the applicant's uncle A. M. Dingiri Banda Adhikari and subsequently the applicant were the ande cultivators of the paddy field and that the respondent-appellant after purchasing interests in the said paddy field from the previous owner, had wrongfully and unlawfully evicted him from the paddy field on the 20th of January 1981.

The respondent-appellant has purchased interests in this paddy field on two conditional transfers in his favour on the execution of the transfer deed No. 3726 dated 14th September, 1968, attested by Sarath Kumar Alawwa, Notary Public marked V2 at the inquiry and on the execution of transfer deed No. 4285 dated 11.7.69 attested by Sarath Kumar Alawwa, Notary Public, which has been marked as V3 at the inquiry. These two transfer deeds are absolute transfers of the paddy field in question with an agreement to reconvey on the part of the vendee within a stated and specified period of time. Learned counsel for the appellant at the argument of this appeal attempted to contend that this transfer, coupled with the agreement to reconvey, created the relationship of creditor and debtor and a loan transaction between the parties and after the execution of the said transfers, the Respondent-appellant received a share of the produce **by way of interest only** and **not as rent.** I hold that no responsible and prudent counsel is entitled to put forward a legal submission to that effect in view of the two full Court decisions of the Supreme Court in *W. N. William Fernando v. W. D. Saranelis*[1] and *H. W. H. Siriwardena v. W. D. Saranelis*[2]. (Five Bench judgments) In these two authoritative judgments the Supreme Court held that a notarially executed transfer with an agreement to re-transfer the property within a specified

period, can never be construed as a "(Moratuwa) Mortgage" or a money lending transaction for the establishment of a relationship of creditor and debtor only.

The Supreme Court laid down the principle that any contract relating to land or creating an interest in land ought to be notarially executed in terms of the provisions of section 2 of the Prevention of Frauds Ordinance and oral and parol evidence cannot be led to alter and vary the terms of the transaction as recorded in the notarially executed document. Thus, in the absence of a plea of fraud or trust, the transaction embodied in the documents marked V2 and V3 is an absolute transfer and conveyance of a property subject to an agreement to re-convey the property within a specified and fixed period of time. On the notarial execution of such document, the property in the paddy field passed to the vendee and transferee and he became owner of the paddy field in question. Thus, it is not open to the respondent-appellant to construe and interpret the transaction embodied in documents V2 and V3 as a money lending transaction or as a "Moratuwa Mortgage" or as creating merely a relationship of creditor and debtor between himself and the vendors of the paddy field. Thus, the construction and interpretation sought to be put on this transaction and on the acceptance of a part of the produce from the paddy field as a payment and acceptance of interest, is wholly unsustainable and untenable, having regard to the principles laid down by the Full Bench in the two judgments referred to above. The respondent-appellant was the owner of the paddy field till such time as the reconveyance was effected and the payment to and acceptance by him of a portion of the produce of the paddy field has to be given the normal construction and interpretation as was contended for on behalf of the applicant-respondent, as a payment towards and acceptance of rent by the land-owner and as the landlord's share of the produce from the paddy field. It is in this light and adopting this interpretation that the rights and duties and the legal relationship between the parties have to be ascertained and determined by the Inquiring Officer and by the Court of Appeal. The Supreme Court stressed and emphasized that where the terms of such a transaction are embodied in a notarially executed document,

no party litigant is entitled to lead oral or parol evidence to contradict, vary or alter the terms of the transaction as embodied in the formal document.

According to the testimony of the applicant, originally the paddy field in question had been handed over to his father to cultivate it as an ande cultivator. Thereafter, both his father Tikiri Banda and his uncle Dingiri Banda had jointly cultivated the paddy field till the year 1968-69 when his father Tikiri Banda fell sick and was bed-ridden and thereafter Dingiri Banda cultivated the paddy field as an ande cultivator with the assistance of the applicant and thereafter the owners of the paddy field accepted and acknowledged the applicant as the ande cultivator of the paddy field in question because he was, right throughout, assisting his uncle Dingiri Banda in the cultivation of the paddy field. This oral evidence of the applicant is supported by the certified copies of the Agricultural Lands Register which have been produced at the inquiry. In the document P15, which is one of such copies of the Agricultural Lands Register for the years 1971-72, in relation to the paddy field Wewekumbura, A. M. Dingiri Banda's name (the applicant's uncle's name) is entered and registered as the ande cultivator and the name of James Appuhamy Wijesuriya, that is the respondent-appellant's name, is entered as the owner-landlord. The evidence of the applicant is supported by the contents of P15 and is substantiated by the evidence given by the aforesaid witness, Dingiri Banda at the inquiry. According to the version of the applicant, in the Maha Season of 1972, the aforesaid A. M. Dingiri Banda, his uncle, had handed over the cultivation of the paddy field in question to the applicant as the applicant had been previously assisting the said Dingiri Banda in the cultivation of the paddy field and this arrangement was acquiesced in, accepted and approved by the owner of the paddy field and thereby the relationship of landlord and tenant arose between the applicant-respondent and the respondent-appellant.

The witnesses called on behalf of the applicant, including the applicant, Adikari Mudiyanselage Dingiri Banda, an uncle of the applicant, Yala-Bamunu Kasthurusinghe, Kumba Liyaddalage Simon,

have given clear evidence that originally the applicant's father (Tikiri Banda) was the ande cultivator of the paddy field and that when he fell ill, he handed over the paddy field to Adikari Mudiyanselage Dingiri Banda who was his assistant in the cultivation of the paddy field and that the aforesaid Dingiri Banda continued to cultivate the paddy field as an ande cultivator and paid the rent to the owner and to the respondent Wijesuriya continuously. There has been evidence led that Wijesuriya and his agents were present at the division of the threshed paddy and the land-owner's share of the paddy was removed from the threshing floor. This evidence adduced by the aforesaid witnesses was unchallenged and unimpugned in cross-examination. Further, the respondent has not led cogent and convincing evidence at the inquiry to rebut such evidence. In the circumstances, as was observed by Justice H. N. G. Fernando in *Eldrick de Silva v. Chandradasa*[3], where one party leds *prima facie* evidence and the opponent fails to lead rebutting and contradicting evidence when he has the means to do so, that is a special matter and feature which the deciding authority must take into account as a "matter" falling within the definition of the word "proved" in section 3 of the Evidence Ordinance. Thus, the finding of the Assistant Commissioner is substantiated and strengthened by this principle of law. Further, in the petition of Appeal filed before the Court of Appeal in the abortive Agrarian Services Inquiry No. C.A. 502/82 A. S. Dambadeniya P401 in paragraph 3(i), the respondent-appellant Wijesuriya himself has stated that the applicant's uncle, the aforesaid Dingiri Banda, was the ande cultivator of the paddy field in question and that the respondent-appellant was the owner landlord. There was no necessity to formally mark this petition of appeal as a document at the subsequent *de novo* inquiry held before the Assistant Commissioner as the Petition of Appeal in C.A. 502/82 formed an integral part of the record when the *de novo* inquiry was commenced by the Assistant Commissioner. Thus, there is no doubt whatsoever, in view of this admission on the part of the respondent-appellant in the aforesaid petition of appeal and in view of the overwhelming and cogent evidence to which I have already alluded that the applicant-respondent's uncle, the aforesaid Dingiri Banda, was the ande cultivator and thereafter, the ande cultivator of the paddy field was the applicant-respondent.

In the course of the argument, learned counsel for the respondent-appellant strenuously argued that there was no cogent evidence placed before the Inquiring Officer that the applicant was evicted on 20.1.81, as asserted by him in his application and in the course of his oral testimony at the inquiry. It was submitted by learned counsel for the respondent-applicant that the applicant was evicted on 20.1.81 **in pursuance of a judgment** and decree for **his ejectment** entered by the District Judge of Kurunegala in D. C. Kurunegala Case No. 673/L and, in these circumstances, it is fallacious and wholly untenable to allege and assert that the applicant was wrongfully and illegally evicted by the respondent and his agents from the paddy field on 20.1.81. In considering this contention, it must be stressed and emphasized that both parties **have not produced** a copy of the proceedings or the judgment or the relevant journal entries in D. C. Kurunegala Case No. 673/L, before the Assistant Commissioner of Agrarian Services as a marked document. The only evidence led before the Inquiring Officer was the **oral** evidence of the aforesaid witness Yalabamunu Kasthurusinghe. He has attempted orally to give evidence in regard to the effect of the order of the learned District Judge of Kurunegala in D. C. Kurunegala Case No. 673/L. This witness has stated in his oral evidence as follows:

"The District Court prohibited both parties from cultivating the paddy field and handed over the paddy field to me as an official of the Agricultural Committee. I employed cultivators and worked the paddy field with the assistance and help of their services up to the year 1983. It should be 1961 and not 1983 as asserted earlier. The District Judge held that the dispute ought to be adjudicated upon by the Agricultural Tribunal and the District Judge dismissed the action. Since I was given possession of the paddy field as a temporary measure till the disposal of the District Court action, the respondent took over possession of the said paddy field from me. I handed over the possession of the paddy field to the respondent as the District Court action had terminated. I cannot remember whether there was any order to hand over possession to the respondent in the District Court order."

By that interim order pronounced by the District Judge of Kurunegala, this paddy field came into CUSTODIA LEGIS till the final determination of that civil action.

Thus, the oral evidence which has been led on this point **without** any challenge or objection is in the teeth of the factual basis on which learned counsel for the appellant has put forward his contention before this Court. The oral evidence of witness Yalabamunu Kasthurusinghe in regard to the orders and judgment of the District Judge in D. C. Kurunegala Case No. 673/L would be inadmissible and irrelevant in terms of section 91 of the Evidence Ordinance, **had objection** been taken to the adduction of such oral evidence at the inquiry. But, unfortunately, no such objection or any challenge or impugnment was made when such oral evidence was led. In the circumstances, the Assistant Commissioner was entitled to base his findings on such oral evidence.

In the course of the second day of argument in appeal, learned counsel for the appellant tendered to me a certified copy of part of the record in D. C. Kurunegala 673/L and invited me to act on the contents of such certified copy. It is not permissible in the attendant circumstances of this appeal to admit fresh evidence in appeal, as suggested by learned counsel for the appellant. Without admitting fresh evidence in this manner, I have perused the certified copy of part of the record that was tendered to me. There is no copy of the judgment which was alleged to have been entered in favour of the plaintiff in that case on 20.1.81 in the certified copy of the record that was tendered to me. It is only a certified copy of a part of the record. Although the journal entry produced only related to the date 20.1.81, the journal entry reads thus:

"Vide proceedings, judgment was entered in favour of the plaintiff."

The alleged proceedings are not available in the part of the certified copy that has been tendered to the Court of Appeal. A perusal of this part of the record which was tendered by learned counsel for the appellant, discloses that the action that was filed by the plaintiff in D. C. Kurunegala Case No. 673/L is **not** an action for declaration of title, for an order of ejectment of the defendants from the land and for an order for delivery of possession of the land to the plaintiff. The plaint pre-supposes and assumes that the plaintiffs are already in possession of the land and there is an allegation that there

is a threat to the plaintiff's possession of the land in question. The prayer to the plaint contains a prayer for a declaration that the plaintiff is entitled to peaceful possession of the land in question and a prayer for the issue of an interim injunction and a permanent injunction restraining the defendants and the members of the defendant's family and agents and servants from entering the paddy field, cultivating the paddy field and interfering with the possession of the plaintiff. In the circumstances the learned District Judge Kurunegala did not have jurisdiction to grant the plaintiff in that action reliefs which were not prayed for in the prayer to the plaint. Vide judgment pronounced by Justice Sansoni in *Sirinivasa Thero v. Suddassi Thero,* 63 N.L.R. 31. Hence it can be safely presumed that judgment entered on 21.1.81 did not contain a declaration of title, an order of ejectment of the defendants and an order for delivery of possession of the land to the plaintiffs. The defendants filed answer alleging that the second defendant was an ande cultivator of the paddy field in question entitled to the statutory protection of the Agrarian Services Act and that the second defendant was at all times in possession of the paddy field and engaged in the cultivation of the paddy field and that the true facts had been suppressed and concealed from the Court by the Plaintiff and the plaintiff's action was a device and a contrivance to dishonestly and fraudulently defeat and jeopardise the rights of ande cultivatorship of the second defendant. Thus, it is manifestly clearly that this action is not an action for declaration of title for an order of ejectment of the defendant and for an order of delivery of possession in favour of the plaintiff. The learned counsel for the appellant **misconstrued** the character and basis of the aforesaid action and contended erroneously that this was an action for declaration of title and ejectment and when judgment was entered in favour of the plaintiff, (according to the journal entry dated 21.1.81), that the District Court of Kurunegala had, in fact, pronounced that the defendants were trespassers, in unlawful occupation of the paddy field in question. Learned counsel for the appellant having entertained the aforesaid misconception in regard to the character and basis of the said action, relied on the judgment pronounced by Chief Justice G. P. S. de Silva in *Tillekaratne Banda v. Kalu Banda*[4] and contended on the basis of

the aforesaid journal entry that the defendants in that action had been evicted from the paddy field in execution of the order of the District Court of Kurunegala and in the circumstances, they were not entitled to claim relief in terms of section 5(3) of the Agrarian Services Act. I hold that this contention of learned counsel for the appellant is wholly misconceived and the decision in *Tillekaratne Banda v. Kalu Banda* (*supra*) has no application to the facts of the present application. In any event, as the judgment in D. C. Kurunegala Case No. 673/L is not a judgment pronounced in an action for declaration of title, ejectment and for order of possession, but an action for declaration to be quieted in peaceful possession and for an interim and a permanent injunction, it is not open to the respondent-appellant to urge that the applicant-respondent was ever evicted from possession of the said paddy by the judgment entered in D. C. Kurunegala 673/L in favour of the plaintiff as evidenced by the journal entry dated 20.1.81. The implication of the plaint in that aforesaid action is that the plaintiffs were in possession of the paddy field at the time of the filing of the action on 12.2.78 and at the delivery of the judgment on 20.1.81. The position asserted by the applicant-respondent is that the respondent-appellant, having obtained an ineffective and inconsequential judgment on 20.1.81, which did not entitle him to an order to be restored to possession or an order for the ejectment of the defendants, that the respondent-appellant had wrongfully by his own devices obtained possession of the paddy field with the assistance of his agents and thereby evicted the applicant-respondent. Thus, even if this Court of Appeal were to admit fresh evidence in the unauthorised manner prayed for and bereft of the requisite relevant circumstances, the part of the certified copy relied upon by learned counsel for the appellant does not enable him to come within the *ratio decidendi* in *Tillekaratne Banda v. Kalu Banda* (*supra*) and to successfully contend that there was a declaration by the District Court of Kurunegala that the defendants in that action were unlawful trespassers and that they were evicted from the paddy field by reason of the order of the District Court. The civilised rules of modern jurisprudence are not devoid of an adequate reply to the unconscionable contentions and claims of this nature advanced by the respondent-appellant.

Learned counsel for the applicant-respondent has relied on and referred this Court to a pronouncement made by Justice H. N. G. Fernando in the Divisional Bench judgment in *D. M. Ariyaratne v. S. Edwin*[5] in relation to the interpretation of the expression "evict" in the provisions of the Paddy Lands Act. Justice H. N. G. Fernando, when he was senior Puisne Judge remarked: "The ordinary meaning of evict in our opinion means to dispossess **by due process of law or by force".** Learned counsel for the applicant-respondent has consequently submitted that even if the defendants in D. C. Kurunegala Case No. 673/L were evicted from the paddy field in execution of the judgment of the District Judge, still, even if the dispossession was by due process of law, it is an eviction in terms of the provisions of the Agrarian Services Act. I hold there is considerable force in that contention but I am of the considered view that the ratio decidendi in *Tillekaratne Banda v. Kalu Banda* (*supra*) has no application whatsoever to the judgment delivered in D. C. Kurunegala Case No. 673/L having particular regard to the different character and nature of that action and having regard to the particular relief prayed for in the prayer to that action.

The learned counsel for the appellant referred me to page 179 of the order of the Assistant Commissioner dated 26.12.90 and bitterly complained and submitted that there were serious misdirections and unjustified findings and inferences without any foundation in evidence in the aforesaid order. The Assistant Commissioner in his order has stated that the respondent-appellant attempted to obtain a permanent injunction against the applicant-respondent in D. C. Kurunegala Case No. 673/L. He has further stated that the applicant-respondent failed to obtain any relief from the District Court and the District Judge had referred the parties to obtain an adjudication and determination from the Agricultural Tribunal. Thereafter, he has held that the respondent-appellant obtained possession of the paddy field in question in 1981 which was handed over earlier by the defendants to the Waga Niladhari pending the disposal of action, and by so obtaining possession in 1981, the respondent-appellant had in effect dispossessed and evicted the applicant-respondent. These observations and findings on the part of the inquiring officer were impugned as misdirections and as findings reached without

supporting evidence. I hold that this contention is unsustainable and untenable as the Assistant Commissioner had before him **only** the **oral evidence** of Waga Niladhari Yalabamunu Kasthurusinghe which was adduced before him **without** any objection, impugnment or challenge. No certified copy of even part of the record was ever placed before the Inquiring Officer by the respective parties. In the circumstances, the Inquiring Officer was justified in acting on the unimpugned oral evidence of the aforesaid witness. I have reproduced earlier the oral evidence given by this witness. This witness has stated that the District Court rejected and dismissed the action in D. C. Kurunegala Case No. 673/L. This witness has also stated after the action was dismissed and the plaint had been rejected, he handed over possession and **the respondent-appellant took over possession from him in 1981** as the witness was only required to retain possession and cultivate the paddy field till the final determination of the action. By that interim order of the District Judge of Kurunegala, this paddy field came into *custodia legis* till the final determination of that action. In view of the oral evidence of the witness, there is no misdirection on the facts as relied upon and the inferences drawn by the Inquiring Officer and his findings on the aforesaid points are based entirely on the unchallenged oral evidence given by that witness. It is true that the certified copy of part of the record produced for the first time **at the argument** of the appeal discloses that the plaintiff obtained some relief from the District Court in terms of the judgment entered in his favour, but there was never a declaration of title order for ejectment of the defendants or an order for delivery of possession to the respondent-appellant in the judgment of the District Court. Equally, there is no record of a pronouncement referring the parties to obtain an adjudication from the Agricultural Tribunal but clearly the respondent-appellant did not obtain possession of the land in terms of that judgment. After he obtained judgment, the respondent-appellant had used his own devices and contrivances to obtain possession of the land from the Waga Niladhari. In the circumstances, I hold that the Assistant Commissioner of Agrarian Services (Inquiries) has not misdirected himself on any questions of fact nor has he arrived at any findings which are not supported by evidence but his conclusions and his findings are entirely based on the unimpugned **oral** evidence of the

aforesaid witness. In the circumstances, the decisions in *Babanis v. Jemma*[6] and *Karawita v. Abeyratne*[7] are not at all helpful to the learned counsel for the appellant in the advancement of his submission. Both in *Babanis v. Jemma* (*supra*) and *Karawita v. Abeyratne* (*supra*) the principle was laid down that a question of law arises where the facts relied upon by the Tribunal are unsupported by evidence and if there are wrong inferences drawn from them, but in the instant appeal, it is manifestly clear that the Assistant Commissioner arrived at certain factual findings and drew certain inferences which were entirely based on the unimpugned and unchallenged oral evidence of the aforesaid witness Yalabamunu Kasthurusinghe. Justice Kulatunge in *Manatunga v. Baronchihamy*[8], laid down the principle that failure to raise objections at the inquiry conducted by the Assistant Commissioner either in regard to the evidence adduced or to the complaint made amounts to waiver and acquiescence. (CF) Also note the provisions of section 154 of the Civil Procedure Code and the explanation to the section. Vide the decision in *Silva v. Kideerslay*[9], *Adaikappa Chettiar v. Thomas Cook & Sons*[10], *Perera v. Seyed Mohamed*[11] in regard to the improper admission of a document without objection as opposed to oral evidence. In the result, I hold that the question of law raised by learned counsel for the respondent-appellant are devoid of merit and substance and his contentions are unsustainable and untenable in law. The civilised rules of modern jurisprudence are not devoid of an adequate reply to unconscionable contentions and claims of this nature, advanced by the respondent-appellant. I hold that there is no error of law which arises upon this appeal. There is no misdirection in point of fact or law, there is no failure to take into account the effect of relevant evidence led at the inquiry. There is no improper evaluation of evidence on a careful consideration of the totality of the evidence placed before the Assistant Commissioner at the inquiry and on a consideration of his order. In the result, I proceed to dismiss the second appeal of the respondent-appellant with costs in a sum of Rs. 4,200/- payable by the respondent-appellant to the applicant-respondent.