

1898.
June 26.

KAPURUHAMI v. HENDRICK *et al.*

C. R., Kurunegala, 2,954.

Co-owners of land—Arrangements as to possession—Evidence of possession of particular trees in lieu of undivided share—Evidence in anticipation of defendant's case.

It is competent for the owners of undivided shares of a land to make arrangements among themselves as to the enjoyment of the produce of the land ; and evidence showing that any one co-owner has enjoyed the fruits of a certain number of trees in pursuance of such arrangement would go to support his title to an undivided share of the land.

Where a defendant in a land suit pleads title by prescription, it is competent for the plaintiff to adduce, in the first instance, evidence of possession by himself in anticipation of the defendant's case.

PLAINTIFF claimed five-sixteenths of a cocoanut garden. He proved that forty years previous to the trial it was possessed by Mudalihamy and Ettarala apparently as joint owners ; that Mudalihamy was entitled to five-sixteenths only ; that Mudalihamy and his co-owner made an arrangement by which Mudalihamy took the produce of twenty-five trees in a particular part of the garden ; that Mudalihamy's interest devolved on himself ; and that he had all alone, since purchase up to a short time before the institution of this suit, taken the produce of the twenty-five trees.

After giving evidence to this effect plaintiff proposed to call other witnesses to corroborate the statement that he and his predecessors in title had been taking the produce of the twenty-five trees. The Commissioner declined to admit any such evidence and dismissed the action.

Plaintiff appealed.

Van Langenberg, for appellant.

Bawa, for respondent.

26th June, 1898. BONSER, C.J.—

I do not think the Court was entitled to dismiss plaintiff's action. It is quite competent for the owners of undivided shares to make arrangements among themselves as to the enjoyment of the produce of the land ; and evidence showing that the plaintiff had enjoyed the fruit of these trees would go to support his title to five-sixteenths.

Further, the evidence was admissible on another ground. The defendants had pleaded adverse possession of the whole of the garden for the prescriptive period, as they were entitled to do, and

it was competent for the plaintiff to adduce evidence to meet that case set up by the defendants. He is not obliged to wait till they have called evidence and then to call rebutting evidence.

1898.
June 26.
BONSER, C.J.

It is competent for him to call evidence, in the first instance, to anticipate the defendants' case.

The case must go back to be tried, and the costs of the previous proceedings and of this appeal will abide the event of the new trial.

