

1946

Present : de Silva J.

RANAWEERA *et al.*, Appellants, and SEELAWATHIE *et al.*,  
Respondents.

69—C. R. Matala, 7,712.

*Appeal—Preliminary objection—Waiver, subsequent to date of filing of petition of appeal, of security for costs and notice of appeal—Validity of.*

It is not open to a party who has waived security for costs and notice of appeal to take any objection that the waiver itself is late.

**A** PPEAL from a judgment of the Commissioner of Requests of Matala.  
*H. W. Jayewardene*, for the defendants, appellants.

*C. E. S. Perera* (with him *S. R. Wijayatilake*), for the plaintiffs, respondents.

June 25, 1946. DE SILVA J.—

A preliminary objection was raised to the hearing of this appeal on the ground that the petition of appeal had been filed on August 27, 1945, and that security for costs and notice of appeal were waived on August 29, 1945. Counsel for the respondent relied in support of his contention on the Five Judge case of *De Silva v. Senathumma*<sup>1</sup> and the case of *Mohamed v. Conrad*<sup>2</sup>. In the latter case, it was doubted whether a waiver of security after the date of the filing of the petition of appeal would be effective, but the point did not arise for decision in that case as there was no waiver at all of the security but merely a consent to the amount of the security tendered. It seems to me that a waiver in the circumstances of this case, though it is not on the date of the filing of the petition of appeal, is good and it is not open to a party who has waived security to take any objection that the waiver itself is late. I, accordingly, decided to hear the appeal but, on the merits, I am of opinion that the judge has come to a correct conclusion. He has held that owing to the

<sup>1</sup> (1940) 41 N. L. R. p. 241.<sup>2</sup> (1941) 43 N. L. R. p. 330.

length of time during which the plaintiff has had possession an ouster may be presumed. This conclusion appears to be supported by the statement appearing in P 1 which states that there was a distribution of the property and that this property in question had been allotted to the vendor Kiri Banda. I would, therefore, dismiss the appeal but, in view of the preliminary objection which failed, neither party will get any costs of appeal.

*Appeal dismissed.*

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