

Present : Akbar J.

1929.

PUNCHI BANDA v. NOORDEEN.

300—C. R. Kandy, 4,911.

Appeal—Agreement to abide by decision of Judge—Arbitration.

Where the parties to an action in the Court of Requests agreed to abide by the decision of the Commissioner after an inspection of the premises in dispute.

Held, that no appeal lay from the decision of the Commissioner.

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

E. Navaratnam, for defendant, appellant.

H. E. Garvin (with *Abeywardene*), for plaintiff, respondent.

February 25, 1929. AKBAR J.—

The appeal is on a simple point of law. On the date of the trial the defendant was put into the witness box by the Commissioner and examined by him for the purpose of getting certain admissions in order to enable him to frame issues. After his examination, owing to certain answers given by him, the plaintiff challenged the defendant to agree to an arbitration by the Commissioner. The record reads as follows :—“ At this stage plaintiff states that if on an inspection by Court, there are any traces of a boutique on one side of Galboda Hena he is willing to have his case dismissed. The challenge is put to the defendant, against whom judgment will be entered if there are no traces of a boutique. He is agreeable. I reserve the right in the event of what I consider uncertainty to let the case go to trial again. Inspection on June 9, 7.30 A.M. ” In accordance with this agreement, the Judge inspected the premises in the presence of the plaintiff and the defendant, and being satisfied that there was no trace of the old boutique as contended by the defendant, he gave judgment for the plaintiff as prayed for, with costs but no damages, but he reserved the right to the defendant to sue for a declaration of title.

On the authority of the case reported in *1 Browne's Reports*, page 120, the Commissioner here was appointed arbitrator by consent of both parties and therefore, there is no appeal from his judgment.

Mr. Navaratnam, for the appellant, argued, on the strength of a case reported in *25 New Law Reports*, page 257, that the Commissioner could not be regarded as an arbitrator, but the facts of

1929.
AKBAR J.
Punchi
Banda v.
Noordeen

that case are different from those here. In that case issues were framed, documents were put in by agreement, Counsel addressed the Court, and the surveyor was called to identify certain lots, and then the Commissioner gave his judgment. The facts of this case are totally different. No issues were framed, and the plaintiff and the defendant agreed to abide by the decision of the Commissioner, after inspection of the site, on certain lines agreed to by them.

I therefore dismiss the appeal with costs.

Appeal dismissed.

