

1964 *Present* : Basnayake, C.J., and Abeyesundere, J.

S. UPAGEERIS. Appellant, and M. ODANIS and 7 others, Respondents

S. C. 41/62—D. C. Panadura, 6919/P

Partition action—Fresh evidence—Admissibility at the stage of appeal.

A partition action was dismissed on the ground that the marriage of a person from whom the plaintiff derived his rights had not been registered. At the hearing of the appeal, the plaintiff produced the marriage certificate. He stated that he was unable to produce it at the trial as it had not been traced then.

Held, that the marriage certificate should be admitted in evidence.

APPEAL from a judgment of the District Court, Panadura.

D. R. P. Goonetilleke, for Plaintiff-Appellant.

C. de S. Wijeratne, for 3rd, 4th, 5th, 7th and 8th Defendants-Respondents.

March 17, 1964. BASNAYAKE, C.J.—

This action has been dismissed on the ground that the plaintiff had failed to prove his title. The learned District Judge founded his judgment on the fact that the marriage of Thobia from whom the plaintiff derived his rights had not been registered. At the hearing of this appeal learned counsel for the appellant sought to produce the certificate of marriage of Thobia. He says he was unable to produce it at the trial as it had not then been traced. If Thobia's marriage was in fact registered, the decision of the District Judge would have to be set aside

This is a partition action in which the duty of investigating title is cast on the Court, and the consequences of a decision are far reaching. Now that we have been apprised of the existence of this vital piece of evidence, we think it just and proper that we should set aside the judgment and decree and send the case back to the trial court in order that the certificate of the marriage registration may be produced. It will help to decide whether Thobia was married to Noiya and whether the marriage was registered. We also direct the District Judge to investigate whether Sediris was a legitimate child of that marriage. We accordingly set aside the judgment and decree of the District Judge and send the case back for the reception of the evidence that the plaintiff now seeks to place before the Court and of any other evidence that the trial Judge may think fit to receive.

In the circumstances of this case we declare the defendants entitled to the costs of the appeal. The costs of the further hearing will abide the final result.

ABEYESUNDERE, J.—I agree.

Case sent back for further hearing.
