

none of the marked documents were read in evidence at the conclusion of the Respondents' case.

For all these reasons, I hold that the Power of Attorney marked P7 has not been duly proved, and cannot be acted upon as evidence. I therefore hold that question 1(a) on which special leave to appeal has been granted in this case, should be answered in the negative.

*Title of the Respondents*

The other connected substantive question on which leave has been granted, which relate to the title of the Respondents to the land described in the schedule to the petition, has been split up into two sub-questions which are reproduced below:

1. (b) Does the Deed produced marked P1 operate to convey the title of Mohideen Abdul Cader, to the Respondents?
- (c) If not, was the Court of Appeal in error in holding that the Learned District Judge had correctly arrived at the finding that the Respondents had established title to the subject matter of the action?

Mr. Musthapha has submitted on behalf of the Appellants that Deed No. 6165 (P1) does not operate to convey the title of Mohideen Abdul Cader, to the Respondents. He has contended in so far as the procedure set out in Section 31 of the Notaries Ordinance No. 1 of 1907, as subsequently amended, has not been complied with in respect to the execution of Deed No. 6165 (P1), it is a nullity. The said procedure is found in rule 30, which provides that-

If he (a notary) attest any deed or instrument executed before him by means of an attorney, he shall preserve a true copy of the power of attorney with his protocol, and shall forward a like copy with the duplicate to the Registrar of Lands

I also note that the Registrar of Land, Anuradhapura, Ulluduhewage Karunaratne, who was called to give evidence on behalf of the Appellants, has stated in his testimony that a copy of P7 has not been forwarded along with the duplicate of the deed marked P1 in compliance with the procedure set out in Section 31 of the Notaries Ordinance. However, in my view this contention cannot be sustained as Section 33 of the Notaries Ordinance clearly enacts that-

No instrument shall be deemed to be invalid by reason only of the failure of any notary to observe any provision of any rule set out in section 31 in respect of any matter of form: provided that nothing hereinbefore contained shall be deemed to give validity to any instrument which may be invalid by reason of non-compliance with the provisions of any other written law.

Mr. Musthapha has further submitted that a plain reading of Deed No. 6165 marked P1 reveals that the alleged attorney Noor Lebbai has purported to convey the land described in its schedule as its owner, and not as the holder of the Power of Attorney marked P7. He has also stressed that the notary before whom the aforesaid deed was executed has not mentioned in his attestation, in what other capacity Noor Lebbai signed the deed in question. Mr. Dayaratne has, in his response, relied very much on