IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

I. W. A. Gunadasa
"Wickramawala", Kohiliyadda,
Hakmana.

PLAINTIFF

C.A 63/1998 (F)
D.C. Matara 7928/L

Vs.

A. K. Piyasena
Koskaha Pittaniya
Kohuliyadda, Hakmana.

DEFENDANT

A. K. Piyasena
Koskaha Pittaniya
Kohuliyadda, Hakmana.

DEFENDANT-APPELLANT

Vs.

I. W. A. Gunadasa
"Wickramawala", Kohiliyadda,
Hakmana.

PLAINTIFF-RESPONDENT

BEFORE: Anil Gooneratne J.

COUNSEL: T. Palliyaguruge for the Defendant-Appellant

M. I. M. Naleen with K. Marasinghe
for the Plaintiff-Respondent

ARGUED ON: 28.03.2012

DECIDED ON: 03.08.2012

GOONERATNE J.

Plaintiff filed action in the District Court of Matara for a declaration of title to the land described in the schedule to the plaint and eviction /damages against the Defendant. At the trial 4 admissions were recorded. Viz. (a) Plaintiff is the owner of the land described in paragraph 2 of plaint by virtue of partition decree in case P/8041, (b) that fiscal handed over possession to Plaintiff on 28.4.1992 (but Defendant refer to it as a symbolic or constructive delivery) (c) that Rev. Wipularatne was a co-owner of the corpus in case P 8041, (d) that Defendant-Appellant cultivated the land in question.

Parties proceeded to trial on 8 issues. Plaintiff has concentrated on forceful occupation of Defendant from June 1992. (issue No. 1). The Defendant's position was that he was the tenant cultivator of the above named Rev. Wipularatne who was a co-owner of the land as above and that the Defendant-Appellant would be a tenant cultivator (issue No. 5) of Plaintiff and that he is not liable to be evicted.

The Defendant-Appellant had commenced the case by giving evidence and it appears to court that the burden of proof was on the Defendant-Appellant in view of the admissions recorded in the case. In this case the main question appears to be whether in fact the Defendant-Appellant was the tenant cultivator of the Plaintiff? A mere cultivator would not mean that one becomes a tenant cultivator of the party concerned. The Appellant's counsel argue that lots 7 & 8 for which the Plaintiff became entitled from the above partition decree, was contained in a larger land which was cultivated by the Appellant who was the tenant cultivator of the above Rev. Wipularatne Thero. Documents V1 – V17 had been produced by the Defendant-Appellant. He further argues that by V4, V5, V7 & V16 would establish that he was the tenant cultivator of the above Rev. Wipularatne and the divided lots 7/8 are included in the corpus in case No. P 8041.

The Appellant also argues that based on admission No. 3 the Defendant-Appellant was the tenant cultivator of Rev. Wipularatne, (answer by D.J to issue No. 3) and contends that the learned District Judge has misdirected, on the question whether rights of the tenant cultivator was extinguished by partition decree. It is contended on behalf of the Appellant that in view of Section 5(2) of the Agrarian Services Act the Appellant's rights as tenant cultivator would be preserved and becomes the tenant cultivator of the Plaintiff-Respondent, by operation of law.

Section 5(2) reads thus:

> Notwithstanding anything in any other law, the tenant cultivator of any extent of paddy land which is purchased by any person under the Partition Law, No. 21of 1977; or which is allocated to a co-owner under a decree for partition shall be deemed to be the tenant cultivator of that extent of paddy land of such purchaser or such co-owner, as the case may be, and the provisions of this Act shall apply accordingly.

The learned counsel supported his case by referring to the several matters urged in paragraph 5 of the Petition of Appeal which deal with the law and several decided cases to demonstrate that the trial Judge has erred in law and facts. The position of the Plaintiff-Respondent was that the Appellant can be a tenant cultivator only on compliance with Section 2(1) of the Agrarian Services law, and as such there was no agreement oral or otherwise in terms of the requirements of the said section.

Section 2(1) reads thus::

> Where any person is the cultivator of any extent of paddy land let to him under any oral or written agreement then, if he is a citizen of Sri Lanka, he shall, subject to the provisions of this Act, be the tenant cultivator of that extent.

The learned trial Judge observes that by P3 (writ of possession) possession had been handed over to the Plaintiff-Respondent by virtue of final decree in the partition case No. 8041 and thereby Plaintiff became entitled to lots 7 & 8 in the corpus that was partitioned. As such trial Judge observe that the Defendant-Appellant's evidence on possession of Plaintiff's based on P3 is contrary to V3, since the Defendant merely states that handing over of possession was only symbolic. Further as regards possession, Judge states it is safe to rely on P3. I have examined folios 80/81 of the judgment and the trial Judge has considered the evidence of the Defendant as follows in that part of the judgment to decide as to whether the Defendant is in fact the tenant cultivator.

විත්තිකරුගේ සාක්ෂිය අනුව ඔහු නඩුවට අදාල විෂය වස්තුවේ ගොවිතැන් කිරීම සහ කුඹුරු හාන්නේ ට්‍රැක්ටර් මගිනි. මේ සඳහා ඔහු ට්‍රැක්ටරයට රුපියල් හැට (60/-) බැගින් ගෙවයි. වැපිරීමේ කටයුතු පමණක් ඔහු සහ දරුවන්ගේ උදව් සහිතව අල්ලපු කුඹුරේ ගොවියෙක් සමග සිදුකරයි. විත්තිකරු ගොයම් කැපීමේ කාර්ය ඉටුකරන්නේ නැත. ඔහු මුදල් ගෙවා ගැහැණු අය ලවා මෙම කටයුත්ත සිදු කරයි. මේ සම්බන්ධයෙන් එක් අයකුට රුපියල් හැත්තෑවක් (70/-) පමණ ගෙවයි.

මේ අනුව බලන කල පැහැදිලි වශයෙන්ම ගොවිතැන් කිරීම සඳහා අවශ්‍ය කාර්යයන් දෙකක් විත්තිකරු හෝ ඔහුගේ පවුලේ අය විසින් නොකර පිටස්තර අය ලවා ඔහු සිදුකර ගනී.

The trial Judge as stated above refer to Section 63 of the Statute and consider the following decided cases and relies on the dicta in cases reported in 70 NLR pg 85 and 72 NLR pg. 10. Based on these cases the learned District Judge holds that the Defendant-Appellant is not a tenant cultivator in terms of the statute.

In Visuvanathan Vs. Thurairajah 70 NLR 83 ...

> The protection conferred by the Paddy Lands Act to an individual is enjoyed only by a person who by his own labour and that of members of his family cultivates a paddy land. A person is not a "tenant-cultivator" within the meaning of the definition of that term in section 63 of the Paddy Lands Act if he employs hired labour for any two of the three different kinds of work contemplated in the definition, viz., ploughing, sowing and reaping; and in regard to the watching and tending of crops, this must be done only by the tenant himself or members of his family.

In Dodanwela Vs. Bandiya 72 NLR 10...

> Where, in an action for declaration of title and ejectment in respect of a land, the defendant pleads that the land is a paddy land and that he, being the cultivator of it as tenant under the plaintiff, cannot be ejected by reason of the provisions of the Paddy Lands Act, the burden is on the defendant to prove that he did not employ hired labour for the work specified in paragraph (b) of the definition of "cultivator" in section 63 of the Paddy Lands Act and that he did not employ

hired labour for at least two of the operations mentioned in paragraph (a) of the definition.

The cases referred to above would be relevant to the period prior to enacting the Agrarian Services Act No. 58 of 1974. I would state that Section 63 of the Agricultural Lands Laws which was replaced by Section 68 of the Agrarian Services Act which, law was in operation at the time of institution of the case in hand contemplate a different interpretation to the definition of tenant cultivator by expanding the functions jointly with any other person.

There is a change in the law on this aspect after enacting Act No. 58 of 1979.

Section 68 of the Agrarian Services Act reads thus:

"cultivator" with reference to an extent of paddy land means any person, other than an Agrarian Services Committee, who by himself or by any member of his family, or jointly with any other person, carries out on such extent:-

(a) two or more of the operations of ploughing, sowing and reaping; and
(b) the operation of tending or watching the crop in each season during which paddy is cultivated on such extent;

On the very same point a judgment of the Court of Appeal need to be considered and applied although the above cases relied upon by the trial Judge are judgments of the Supreme Court which dealt with the provisions of the Paddy Lands Act and the Agricultural Lands Law. As such those

cases cannot be relied upon and applied to the case in hand which was based in terms of the Agrarian Services Act No. 58 of 1979.

In Kamalaratne Vs. Samaratunge 1998(2) SLR 288 at 289 & 290...

> I have heard both the learned counsel for the appellant and the learned counsel for the respondent. The Assistant commissioner of Agrarian Services, Gampaha District, has arrived at the conclusion that since the applicant reaped the paddy jointly with the assistance of hired agricultural labourers that there has been a violation of the prohibition laid down by the law and, consequently, there results a forfeiture of his ande rights. I hold that this finding is due to a misdirection both in regard to the law and in regard to the facts established at the inquiry. Under the provisions of the Paddy Lands Act and under the provisions of the Agricultural Lands Law, one came across a stringent definition of the term "cultivator". The engagement of agricultural labour, even jointly with the ande cultivator, resulted in a forfeiture of ande rights. The provisions of the Agrarian Services Act has effected a departure from such an exposition of the law. Section 68 of the Agrarian Services Act in defining the expression "cultivator" sets out that any person who by himself or by any member of his family or jointly with any other person, carries out two or more of the operations of ploughing, sowing and reaping and the operations of tending or watching over the crop during the seasons when paddy is cultivated on such paddy field, is a tenant cultivator. The change in the law has been effected by the enactment of the expression "or jointly with any other person". Thus, a tenant cultivator who himself takes part in two of these operations jointly with hired agricultural labourers, by engaging such agricultural labour on hire, does not violate any prohibition enacted by then law and, consequently there would be no forfeiture of his rights.

The other matter that the trial Judge had considered (folios 81/82) in the judgment is the denial of status or title of Plaintiff by the

Defendant-Appellant and his land lord prior to the decree in the partition case P 8041. As such trial Judge observes by this denial the rights of the Defendant-Appellant which is available under Section 5(2) and 2(1) of the Agrarian Services Act would not apply and could not be enforced. The trial Judge relies to support his view in the cases reported in 1987(1) SLR 367 and 1982 (2) CLR 318. I wish to observe that both the above cases are judgments under the Rent Laws and or on the Rent Act. This cannot have a bearing on the tenant cultivator's rights under the Agrarian Services Act. Further land lord under the Rent Act and the Agrarian Services Act would not be the same. I cannot agree that the same or similar definition applies to each other. These are two separate laws. Where the scheme of each statute differ from each other.

This distinction is further supported in the case of Leelawathie Ratnayake Vs. S.M. sirisena C.A 101/75 decided on 9.12.1983. Though the above case was based on the Agricultural Lands Laws which was succeeded by the Agrarian Services Act the main important provisions are geared to protect the tenant cultivator's rights.

The following extract from the judgment at pgs. 6/7 are relevant. It's rational cannot be ignored on agricultural disputes and matters

A "landlord" in terms of the Agricultural Lands Law means a person "who will for the time being be entitled to the rent in respect of such extent if it were let on rent to any

person. (The underlining is mine). Under the Rent Act, a purchaser becomes entitled of the rent by attornment, that is, by the tenant acknowledging him as the landlord. But under the Agricultural Lands Law a purchaser will be entitled to the rent if the field has been already let to any person. No attornment is necessary by the tenant cultivator to the new owner because the purchaser by reason of his ownership becomes entitlement to the rent. The status of the tenant cultivator is established at the time of the first letting of the field to him under section 3(1) of the Paddy Lands Act. A tenant cultivator is defined there, as a person who "is the cultivator of any extent of paddy land let to him under any oral or written agreement.....". In the present case the field had been first let to the respondent on an oral agreement by Alexander Keppitipola on behalf of the owner, George keppitipola. He therefore became the tenant cultivator of the field and remained so at the time of its purchase by the appellant, who would then be entitled to the rent as new owner. The appellant is thus the landlord of the field in terms of the definition contained in section 54 of the Law. Attornment to the new owner as landlord is not required, under this Law. This is in consonance with the policy of the Law that maximum amount of security of tenure should be provided for tenant cultivators. See the observations of Athukorale, J., in Bempi v. Davith (1978-79 SLR Vol. 2 Pt 7 page 215, 217) in regard to the Paddy Lands Act. Indeed under section 3 (11) of the Agricultural Lands Law the rights of a tenant cultivator of any extent of paddy land is not affected in any manner by the sale... of the right, title and interest of the landlord of such extent.

The above judgment in respect of the land would demonstrate that the Paddy Lands Act would hold good even in regard to certain matters to the Act now in force namely the Agrarian Services Act. The evidence led in the Original Court which had not been contradicted would be good evidence and remain as evidence in the case and should be considered and identified. The following items of evidence would be relevant.

(a) Documents V4, V5, V7 to V16 would establish that Defendant was the tenant cultivator of Rev. Wipularatne Thero of the land inclusive of two undivided lots allotted to Plaintiff. No specific denial by Plaintiff. Some of the above documents being an entry in the Register would be prima facie evidence of the case land stated therein. That evidence would be sufficient to establish that fact unless resulted or overcome by other evidence. Plaintiff-Appellant had not led evidence in resulted to demolish that evidence. Herath Vs. Peter 1989 (2) SLR 325 followed.

(b) Plaintiff admitted in evidence that the said Rev. Wipularatne Thero though a co-owner possessed the entire land which formed the corpus in the partition case and Defendant-Appellant was his tenant cultivator of the entire extent of land.

(c) Defendant offered to Plaintiff the 'paravenial' share in respect of the two lots allotted to Plaintiff and upon refusal to accept deposited same in Kirinda Puhulwatta Agrarian Services Office.

In the above circumstances I am compelled to reject the views of the learned District Judge, Matara. Section 5(2) of the Agrarian Services Act deals with a situation after final decree in a partition suit. The said section would lend support to the position of the Defendant-Appellant that he is the duly authorized tenant cultivator by operation of law, of the land in dispute. Therefore I set aside the judgment of District Court dated 3.12.1997 and grant the relief as prayed for in sub paragraphs (ඇ) & (ඈ) of the Petition of Appeal with costs.

Appeal allowed.

JUDGE OF THE COURT OF APPEAL