

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

CA PHC 42/2000

PHC Kurunegala 134/1998

H.M. Punchi banda

Walpaluma

Mandapola

APPELLANT

Vs.

Commissioner

Agrarian Services

Kurunegala

RESPONDENT

C.A.(PHC) Appeal No.42/2000 - P.H.C. Kurunegala No. 134/1998

Before : **SISIRA DE ABREW, J.** and
ANIL GOONERATNE, J.

Counsel : Sumedha Mahawanniarachchi for the
Appellant.

Chaya Sri Nammuni S.C. for the 1st
Respondent.

D.K. Dhanpala for the 2nd Respondent.

Argued &
Decided on : 14.09.2012.

Sisira de Abrew, J.

Heard learned counsel for the appellant, learned State Counsel and learned counsel for the respondents.

This is an appeal to set aside the order of the learned High Court Judge dated 25th of February 2000 wherein he dismissed a Revision Application filed by the appellant seeking to set aside the order of the learned Magistrate dated 8th of September 1998.

Dingiribanda, the 2nd respondent in this case made complaint to the Commissioner of Agrarian Services alleging that he being the Ande cultivator, was evicted from the paddy land that he was cultivating by the appellant in this case (H.M. Punchibanda).

Commissioner of Agrarian Services held an inquiry and decided that Dingiribanda has been evicted by the appellant. Thereafter he directed the appellant to hand over the possession of the paddy land to Dingiribanda. Since the order was not carried out by the appellant, Commissioner took steps to file a case in the Magistrate's Court. Later a Commissioner withdrew the said Magistrate's Court case on the ground that there was ^a defect in the papers filed by him in the Magistrate's Court. Subsequently, he directed the appellant to hand over possession of the land, boundaries of which were different from the boundaries of the complaint made by Dingiribanda (Ande Cultivator). Since the appellant failed to carry out the order, a case was filed by the Commissioner moving to eject the appellant. This was the 2nd case filed against him by the Commissioner. We note that the boundaries of the land described in the 2nd case are different from the boundaries of the land in respect of which the inquiry was held by the Commissioner. Therefore it appears that the Commissioner held an inquiry in respect of one land but filed a case for ejectment in respect of another land. The learned Magistrate without considering these matters made an order ejecting the appellant.

Learned counsel for the 2nd respondent (Ande Cultivator Dingiribanda) admits this position. For these reasons, we hold that the order made by the learned Magistrate dated 8th of September 1998

evicting the appellant is wrong. On this matter, we would like to consider the judgment of his Lordship Thamotheram , J., Wimalaratne, J., and Rajaratnam, J. in *Rosalin Nona Vs. Assistant Commissioner of Agrarian Services*, 75 NLR 443 wherein Lordship held thus:

“Where a person who has been ordered under the Paddy Lands Act to vacate a land fails to comply with the order, and the Commissioner then moves the Magistrate’s Court under section 21(1) of the Act for an order to evict such person through the Fiscal, the Commissioner’s order made under section 4(1) 1A (c) as well as order of the Board of View confirming such order are final and conclusive and cannot be questioned in the proceedings before the Magistrate under section 21. Section 21 does not permit the Magistrate to examine the validity of the order of the Commissioner, except in regard to the accuracy of the particulars furnished by the Commissioner, viz., the person mentioned in the order or extent and description of the land. It is only in such cases that the order of the Magistrate can be challenged in an appeal preferred to the Supreme Court under section 21 (3).”

Counsel for the 2nd respondent (the Ande Cultivator) rightly admitted before us that there is a defect with regard to the identification of the corpus. When considering all these matters, we are of the opinion that the order of the learned Magistrate dated

8th of September 1998 cannot be permitted to stand. Since the learned High Court Judge has made an order dismissing the Revision Application filed by the appellant. The said order dated 25th of February 2000 cannot be permitted to stand. We set aside the both orders of the learned Magistrate and the learned High Court Judge and allow the appeal.

Appeal allowed.

JUDGE OF THE COURT OF APPEAL

Anil Gooneratne, J.

I agree.

JUDGE OF THE COURT OF APPEAL

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