

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

**CA Writ 131/2012**

Weerakoon Mudiyanseelage Prasanna Saminda Bandara  
Weerakoon.

No: 446/4,  
Kandy Road,  
Kurunegala.

And another

**Appellants**

**Vs.**

P.D.A Swarnalatha  
Deputy Commissioner Officer,  
Agrarian Development,  
Kurunegala.

And 05 others

**Respondents**

**C.A. Writ Application No.131/2012**

Before :                      **S.Sriskandarajah, J (P,C/A)**  
                                    **Deepali Wijesundera, J**

Counsel:                      Saliya Pieris with Thanuka Nandasiri  
                                    for the Petitioner

Argued &

Decided on:                      18.06.2012.

**S.Sriskandarajah, J. (P,C/A)**

Heard counsel in support of this application learned counsel for the petitioner submits to court that the owner of the land in issue transferred the said agricultural land after offering to Hethuhamy's son, as the Hethuhamy is the tenant cultivator and he has died in 2008. As Hethuhamy's son declined to purchase the said agricultural land, the 1<sup>st</sup> petitioner, the owner of the agricultural land has sold it to the 6<sup>th</sup> respondent. In the meantime the 5<sup>th</sup> respondent who claimed that he was cultivating the said land under Hethuhamy, the tenant cultivator claimed cultivation rights and he claims that the land should have been offered to him before it was sold to the 6<sup>th</sup> respondent. An inquiry was held to determine this question and the inquiry is still pending. In the meantime the 5<sup>th</sup> respondent was allowed to cultivate the said land.

The petitioners in this application submits that an interim order allowing the 5<sup>th</sup> respondent to cultivate the said land cannot be made without an inquiry and in

particular 5<sup>th</sup> respondent is not the tenant cultivator and he is a sub tenant and he was cultivating without the consent of the owner.

The petitioner is not the owner and he has transferred the said land to the 6<sup>th</sup> respondent. The 6<sup>th</sup> respondent who is the owner of the said land has not sought to challenge the interim order granting permission for the 5<sup>th</sup> respondent to cultivate. The 2<sup>nd</sup> petitioner claims that he is the father of the 6<sup>th</sup> respondent but there is no document to support that he is a tenant cultivator or he has any right under the Agrarian Services Act.

In these circumstances, neither the 1<sup>st</sup> petitioner nor the 2<sup>nd</sup> petitioner has locus to challenge the interim decision permitting the 5<sup>th</sup> respondent to cultivate the land until the conclusion of the inquiry to determine the sale of the said land by the petitioner. Therefore this court refuses to issue notice.

**PRESIDENT OF THE COURT OF APPEAL**

**Deepali Wijesundera, J**

I agree

**JUDGE OF THE COURT OF APPEAL**

Na/-