

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

Kirikankanamalage Ariyasena,  
Athukoralawatta,  
Kuttapitiya,  
Pelmadulla.

C.A. No. 352 / 2000 (F)

Plaintiff

**Vs.**

D.C. Ratnapura No. 165 / L

D.M.C.P. Dissanayake alias D.M.  
Chandrika Priyangani Dissanayake,  
Elaudalanda, Kaltota,  
Balangoda.

Defendant

**And Now Between**

Kirikankanamalage Ariyasena,  
Athukoralawatta,  
Kuttapitiya,  
Pelmadulla.

Plaintiff-Appellant

**Vs**

D.M.C.P. Dissanayake alias D.M.  
Chandrika Priyangani Dissanayake,  
Elaudalanda, Kaltota,  
Balangoda.

Defendant Respondent

BEFORE : UPALY ABEYRATHNE J.

COUNSEL : H. Withanachchi with Shantha  
Karunadasa for the Plaintiff Appellnt  
Navin Marapana with Tharanatha  
Palliyaguruge for the Defendant  
Respondent

ARGUED ON : 31.05.2012

DECIDED ON : 09.05.2013

UPALY ABEYRATHNE, J.

The Plaintiff Appellant (hereinafter referred to as the Appellant) instituted an action against the Defendant Respondent (hereinafter referred to as the Respondent) in the District Court of Ratnapura seeking a declaration of title to the land described in the schedule to the plaint. The Respondent filed answer denying the averments in the plaint and prayed for a dismissal of the Appellant's action. The case proceeded to trial on 04 issues. After trial, the learned District Judge having come to a conclusion that the Appellant was entitled to a declaration of title has held that the Appellant was not entitled to a judgment ejecting the Respondent from the land in suit. Being aggrieved by the said judgment dated 24.04.2000 the Appellant has preferred the present appeal to this court.

The Respondent's position was that she was the tenant cultivator of the land in suit and hence she cannot be ejected by a judgment of the District Court. The evidence of the Respondent's case was that one Dharmaratne was the

tenant cultivator of the land in suit and said Dhamaratne transferred his rights of tenant cultivator to the Respondent by his letter dated 02.09.1987 (V 5).

The Appellant has derived title to the land in suit by deed of transfer bearing No. 5099 dated 02.12.1985. The Respondent has admitted the said title of the Appellant. The Appellant has admitted that said Dhamaratna was the tenant cultivator under his predecessor in title. Hence it is clear from the said evidence that said Dhamaratne had become the tenant cultivator under the Appellant in consequent to the said deed of transfer bearing No. 5099 dated 02.12.1985.

It is seen from the said evidence that after the execution of the said deed of transfer bearing No. 5099 dated 02.12.1985 said Dhamaratne has transferred his rights of tenant cultivator to the Appellant. In this regard a question would arise as to whether the said transfer of the rights of tenant cultivator is legal? If the answer to this question is 'yes' then the Respondent's possession of the land in suit would necessarily become legal. If so the Appellant would not be entitled to a judgment ejecting the Respondent from the land in suit.

At the trial the Appellant has produced a document marked P 1. P 1 was a statement made by the Respondent at an inquiry made in to an application to amend the name of the tenant cultivator of the land in suit. According to the said document the Respondent was the wife of Dharmaratna who was the tenant cultivator under the Appellant's predecessor in title and after the death of said Dharmaratne the Respondent has made an Application to include her name as the tenant cultivator. The Officer who produced the document P 1 at the trial has testified that the Respondent's name has been entered in the Register of Agricultural Lands as the tenant cultivator of the land in suit.

According to Section 07 of the Agrarian Services Act No 58 of 1979 a tenant cultivator is entitled to nominate a member of his family as a successor who shall be entitled to succeed to rights of such tenant cultivator. Section 07 of the said Act stipulates as follows:

“A tenant cultivator of any extent of paddy land, other than a tenant cultivator who cultivates such extent either jointly or in rotation with any other tenant cultivator, may nominate a member of his family as a successor who shall be entitled to succeed to such tenant cultivator's rights under this Act in respect of such extent upon the death of such tenant cultivator.”

Also, according to Section 45(3) of the Agrarian Service Act any entry in the Register of Agricultural Lands which has been prepared or revised under the provisions of Section 45 and which is for the time being in force shall be admissible in evidence and shall be prima facie evidence of the facts stated therein.

Section 5(1) of the Agrarian Service Act stipulates that “A tenant cultivator of any extent of paddy land shall have the right to occupy and use such extent in accordance with the provisions of this Act and shall not be evicted from such extent notwithstanding anything to the contrary in any oral or written agreement by which such extent has been let to such tenant cultivator, and no person shall interfere in the occupation and use of such extent by the tenant cultivator and the landlord shall not demand or receive from the tenant cultivator any rent in excess of the rent required by this Act to be paid in respect of such extent to the landlord.”

Evidence of the case clearly shows that after the death of Dharmaratna the Respondent's name has been entered in the Register of Agricultural Lands as the tenant cultivator of the land in suit under the Appellant. Hence in the light of the said statutory provisions contained in the Agrarian Services Act No 58 of 1979 I am of the view that the Appellant is not entitled to a judgment ejecting the Respondent from the land in suit.

In the said circumstances I see no reason to interfere with the said judgement of the learned District Judge dated 24.04.2000. Therefore I dismiss the appeal of the Appellant with costs.

*Appeal dismissed.*

Judge of the Court of Appeal