

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

In the matter of an appeal under Article 154 P(6) of the Constitution of the Democratic Socialist Republic of Sri Lanka. Read with section 9 of the High Court of Provinces (Special Provision) Act No.19 of 1990.

CA (PHC) 14/2005

High Court of Hambantota.

Case No. H.C.A. 76/2002

Magistrate Court of Hambantota.

Case No: 48957

D.M. Ratnayake,
Assistant Agrarian Development
Commissioner,
Agrarian Development Office,
Hambantota.

Applicant

Vs.

M.M. Piyadasa,
4th Miles Post,
Punchihenayagama,
Ridiegama.

Respondent

AND

M.M. Piyadasa,
4th Miles Post,
Punchihenayagama,
Ridiegama.

Respondent/Petitioner

Vs.

1. D.M. Ratnayake,
Assistant Agrarian Development
Commissioner,
Agrarian Development Office,
Hambantota.

Applicant/Respondent

2. Needa Mebal Abesinghe,
Oanakaweka Road,
Pelawatta,
Battaramulla.

2nd Respondent

And Now Between

M.M. Piyadasa,
4th Miles Post,
Punchihenayagama,
Ridiegama.

**Respondent/Petitioner/
Appellant**

Vs.

1. D.M. Ratnayake,
Assistant Agrarian Development
Commissioner,
Agrarian Development Office,
Hambantota.

**Applicant/Respondent/
Respondent**

2. Needa Mebal Abesinghe,
Oanakaweka Road,
Pelawatta,
Battaramulla.

2nd Respondent/ Respondent

Before : W.M.M.Malinie Gunarathne, J

: P.R.Walgama, J

Counsel : W. Dayarathne PC appellant with

**: P.D.D.W. Ananda, W.K.M.G. Ragithe Y. Thenekoon for
Petitioner - Appellant.**

Argued on : 06.07.2015

Decided on: 16.10.2015

CASE- NO-CA (PHC)- 14/2005/ JUDGMENT- 16.10.2015

P.R.Walgama, J

The Petitioner- Appellant(herein after called and referred to as the Appellant) by this appeal has impugned the order of the Learned High Court Judge dated 30.11.2004, and the order of the Learned Magistrate dated 12.08.2002.

The pertinent background to the instant proceedings are as follows;

It is common ground that the Petitioner- Appellant was the tenant cultivator of the 2nd Respondent, in the land called referred as KELAMBAGAHA KUMBURA , containing in extent 5 acres, situated at Koggala, Ambalanthota.

The 2nd Respondent had made an application to the Assistant Commissioner of Agrarian Services for payment of arrears of rent in terms of Section 18(1) of the Agrarian Services Act No.58 of 1979 , amended by No.4 of 1991, due from the Appellant who was the tenant cultivator of the said land. Pursuant to the said application, the Appellant was noticed on many times to appear before investigating officer of Agrarian Services for the inquiry, and as he was not present it was heard ex parte and was decided that the Appellant has defaulted in payment to

the value of 10 bushels of paddy. It is seen from the proceedings that the Appellant has never paid the said arrears and hence the 2nd Respondent has written to the Commissioner of Agrarian Services to terminate the Appellant's service as the tenant cultivator from the said land. Thereupon the Assistant Commissioner of Agrarian Services had informed the Appellant by notice in terms of Section 10(2)(3) of the Agrarian Services Act No. 46 of 2000 to hand over the possession of the paddy land in issue.

As the Appellant did not vacate the above paddy land the Assistant Commissioner of Agrarian Services, acting under Section 8(1) of Agrarian Services Act No. 46 of 2000, moved the Learned Magistrate to make order, to hand over the said paddy land to the 2nd Respondent.

Sequent to the above application, the Learned Magistrate has made an order, to the fiscal to hand over the paddy land to the 2nd Respondent, and same was accepted by the Power of Attorney holder for the 2nd Respondent accordingly.

Being aggrieved by the said order of the Learned Magistrate, the Petitioner-Appellant, came by way of a Revision application to the Provincial High Court of Hambantota, to have the said order set aside or vacate.

The Learned High Court Judge by his order has considered the vital issues raised by the Petitioner and arrived at the conclusion mentioned under.

In the said application to the High Court the Petitioner has contended that the 1st Respondent has decided the claim of the 2nd Respondent to the effect that the Petitioner is in arrears of rent, without hearing him. It is alleged by the Petitioner that the notices sent by the 1st Respondent, which are marked as P2,P3,P4 are addressed to one N.M.Piyadasa where as he is M.M.Piyadasa and as such he did not receive the above purported documents. In effect he could not act according to the instructions given in those documents. But the 1st and the 2nd Respondents stated that the said documents were handed over to the Petitioner Appellant accordingly. It was also alleged by the 1st and the 2nd Respondents that the Petitioner- Appellant has assailed the said order of the Learned Magistrate only after two years of the said order. The Petitioner-Appellant's position as to the delay was that the said documents did not bear his name accurately. But the Learned High Court Judge was not inclined to accept the same.

The 2nd Respondent has contended that, the notices sent by the 1st Respondent was duly served on the Appellant. Nevertheless he has refused to appear before the inquiry and sent his father M.M.Babasingho. In the above setting the Appellant is now estopped from denying the receipt of the said documents which has been duly served on him. The document marked 2V bears ample testimony to that effect.

The Learned High Court Judge in dealing with the contentions of the Petitioner Appellant regarding the way in which the 1st

Respondent held the inquiry, and failure on his part to inform the Appellant, it is said that the Petitioner-Appellant has signed the said documents which were sent through the registered post. The said position is fortified by documents marked 1V1 and 1V2. Therefore it is apparent that the Petitioner Appellant's version is not trustworthy, and should be rejected in limine.

The Petitioner-Appellant has alleged the said inquiry was held by the person who was not authorized to hold such inquiry, and as such the inquiry which was held by officer, is not valid. But it is salient to note that, in terms of Section 18(1) of the Agrarian Services Act No. 58 of 1979 amended by Act No. 4 of 1991 the Commissioner of Agrarian Services is empowered to appoint any officer for the purpose of holding such inquiry.

The Commissioner of Agrarian Services had given due notice to the Petitioner -Appellant as to the said appointment, but nevertheless had failed to appear at the inquiry. As the result of his nonappearance before the inquiry it was determined that the Petitioner Appellant should hand over the vacant possession to the 2nd Respondent.

In the said backdrop it is abundantly clear that the Learned High Court Judge has analyzed the facts and the legal matrix in the correct perspective, which does not warrant a variation in the impugned order. Further more the Learned Magistrate has acted within the four corners of his authority, and had

order to the fiscal to hand over the possession of the paddy land, to the 2nd Respondent.

In the above setting this court see no plausible reason to interfere with the said impugned orders of the Learned High Court Judge and the Learned Magistrate as stated above. Hence I dismiss the Appeal accordingly.

Hence the appeal is dismissed without costs

JUDGE OF THE COURT OF APPEAL

W.M.M.Malinie Gunarathne, J

I agree,

JUDGE OF THE COURT OF APPEAL