

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

An application for Revision and/or Restitution in intergrum in terms of Article 138(1) of the Constitution of the Republic of Sri Lanka against the Judgment/order dated 3rd March 2011 of the Provincial High Court of the Western Province Holden at Kalutara in case No: WP/HCCA/Kalutara/06/2010.

Court of Appeal

Application No:

CA/PHC/APN 137/12

PROVINCIAL HIGH

COURT

(KALUTARA)

WRIT No – 06/2010

1. Roslin Gulawita,

No: 32, Weerasekera Place,

Kalutara.

1. Sidda Rupage Rohana Priyantha,

Pandeniya,

Halkandawila,

Payagala.

Petitioners.

1. A.M. Arif,
Additional Commissioner of Agrarian
Development,
Agrarian Development District Office,
Kachchery,
Kalutara.

2. Commissioner General of Agrarian
Development,
Agrarian Development Department,
P.O. Box – 537,
Colombo – 07.

3. U.P. Siripsla,
Additional Commissioner General of
Agrarian Development (Legal)
Agrarian Development Department,
P.O. Box – 537, Colombo – 07.

4. The Registrar of Lands,
Land Registry,
Matugama.

5. G.P. Simon,
Pandeniya,
Halkadawela,
Payagala.

6. Hon. Attorney General
Attorney General's Department
Colombo 12.

Respondents

AND

G.P. Simon,
Pardeniya,
Halkadawela,
Payagala.

5th Respondent – Petitioner

1. Roslin Gulawita,
No: 32, Weerasekera Place,
Kalutara.
2. Sidda Rupage Rohana Priyantha,
Pardeniya,
Halkandawila,
Payagala.

Petitioner – Respondents

1. Additional Commissioner of Agrarian Development,
Agrarian Development District Office,
Kalugara.
2. Commissioner General of Agrarian Development,
Agrarian Development Department,
P.O. Box – 537,
Colombo – 07.
3. Additional Commissioner General of Agrarian Development (Legal)
Agrarian Development Department,
P.O. Box – 537, Colombo – 07.
4. The Registrar of Lands,
Land Registry,
Matugama.
5. Hon. Attorney General
Attorney General's Department
Colombo 12.

Respondent - Respondents

Before : W.M.M.Malinie Gunarathne, J
: P.R.Walgama, J

Counsel : J.P. Gamage with Wellpili for Appellant.

: Rohana Deshapriya for 1 & 2 Petitioners.

: Suranga Wimalasena, SSC for 1,2,3 & 5 Respondent.

Argued on : 04.03.2015

Decided on: 02.10.2015

CASE-NO-CA (PHC) APN- 137/2012- JUDGMENT- 02.10.2015

P.R.Walgama, J

The instant appeal concerns the effect of the judgment of the learned High Court Judge, dated 03rd March 2011. The Petitioner- Respondents moved court in terms of Article 154 P (4)(b) of the Constitution, by which application, the Petitioners had urged for the following reliefs.

The Petitioner- Respondents, made an application for a mandate in the nature of writ of Certiorari against the 3rd Respondent to quash the decision dated 30th December 2009 marked as P11, further to issue a mandate in the nature of writ of Prohibition against the Respondents from taking any steps with regard to the application made by the 5th Respondent for the cancellation of the Deed bearing No. 009.

The Learned High Court judge having inquired in to the above application had determined thus;

The 1st Petitioner Respondent, ½ share of the land in issue to the 2nd Petitioner Respondent by deed bearing No. 009, dated 18.10.2008, and both became co owners to the said land.

Pursuant to the above transaction the 5th Respondent- Petitioner made a request to the 1st Respondent by letter dated 29th October 2008 stating that he had worked in the land in issue as a tenant cultivator under the 1st Petitioner Respondent, over 40 years and had requested to cancel the said deed, wherein the 1st Petitioner and the 5th Respondent- Petitioner were call for an inquiry by the 1st Respondent.

The 1st Respondent recorded statements from the 1st and the 2nd Petitioners respectively. In the said inquiry the Respondent, asserted that he was the tenant cultivator under the 1st Petitioner Respondent nearly for 40 years but the stance of the Petitioners were, the Respondent Appellant was a labourer. It is salient to not that according to the extract from the Agricultural Land Registry, the name of the 5th Respondent does not disclose as the tenant cultivator.

Thereafter the 1st Respondent by his letter dated 6th November 2009, dismissed the application of the 5th Respondent Appellant. Nevertheless under the direction of the 3rd Respondent a fresh

inquiry was held by the 1st Respondent. Pursuant to the said inquiry it was determined that the afore said deed is not valid, and has been cancelled.

The Learned High Court Judge, taking in to consideration the document marked as P6, which is the Agricultural land Register ,was of the view that the contents stated therein is a sufficient to prove the fact that the Respondent Appellant is not a tenant cultivator under the 1st Petitioner Respondent.

The Learned High Court Judge adverted to the Section 2 of the Agrarian Development Act No. 46 of 2000, which states thus;

2(1) “The owner of an extent of paddy land in respect of which there is a tenant cultivator, who intends to sell such extent, shall in the first instant make an offer to sell such extent to the tenant cultivator. Such offer shall be made to the tenant cultivator by communication in writing, and send by registered post, stating the price at which he offers to sell such extent. The owner shall cause a copy of such communication to be sent by registered post to the Agrarian Development Council within whose area of authority such paddy land is situated.”

It is viewed from the documents herein tendered that the 1st Respondent has dismissed the application of the 5th Respondent, by his order dated 06.11.2009, which is marked as P10.

The above dismissal was on the basis that the 5th Respondent Appellant was not a tenant cultivator, and the 1st Respondent was of the view that inquiry in terms of Section 2 does not warrant as claimed by the Respondent Appellant.

Thereafter the 3rd Respondent sent has informed the 1st Respondent by letter dated 30.12.2009, marked P11, with copies to the Petitioners to call for another inquiry in terms of Section 2 of the said Act.

Subsequently, pursuant to the said directive the 1st Respondent had cancelled the above mentioned purported deed marked P1, which act the Learned High Court Judge has construed as a violation of Rules of Natural Justice.

The 5th Respondent Appellant has produced documents marked V1 to V3 in order to prove that he was a tenant cultivator of the land in issue. But the Learned High Court Judge was of the view, that those documents do not establish his rights as a tenant cultivator. It is salient to note that the 5th Respondent has never paid the rental to the Petitioner Respondent.

The Learned High Court Judge has adverted to the document marked P9. As per said letter, the 1st Respondent was compelled to hold an inquiry in terms of Section 2 of the above Act if it only to decide the rights of a tenant cultivator.

For the ongoing reasons the Learned High Court Judge has issued a writ of certiorari against the 3rd Respondent to quashed his decision dated 30.12.2009 and had quashed the decision of the 1st Respondent dated 14.07.2010 accordingly.

Further a writ of prohibition has been issued against the Respondents from taking any step to abrogate the decision stated in the document marked in P10.

It is contended by the counsel for the 1st, 2nd, 3rd respondents, that the directive given by the 3rd Respondent to the 1st Respondent to call the parties for a fresh inquiry, in terms of Section 2 of the said Act, is ultra vires, since the matter in dispute has been decided by the 1st Respondent by document marked P10.

In the above setting it is stated that the 1st Respondent has no authority to change or vary his decision, the legality of his decision could be reviewed, only by a competent court.

The Petitioner- Respondents contend that the 5th Respondent Petitioner has not established any valid exceptional circumstances

for this court to exercise its revisionary jurisdiction in terms of Article 140 of the Constitution.

The Petitioner-Respondents had also stressed the fact that the 5th Respondent - Petitioner is guilty of laches in, invoking the Revisionary jurisdiction of this court. Any how this Court is not inclined, to treat the said objection as a fundamental matter which decides the maintainability of this case.

Hence in the above setting I am of the view that the application of the 5th Respondent- Petitioner's application is devoid of merits and should stand rejected.

Petition is dismissed accordingly. We order no costs.

JUDGE OF THE COURT OF APPEAL

W.M.M.Malinie Gunarathne, J

I agree,

JUDGE OF THE COURT OF APPEAL