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

Court of Appeal Case No.
CA (PHC) 133/2007

High Court of Badulla Case No.
80/2006

Magistrate Court Bandarawela
Case No. 68297

1. M.S. Atigala
2. J.A. Senavirathne
No.162, Heel Oya,
Egodagama

First Party - Respondents - Respondents - Appellants

Vs.

Gamhewage Piyasena,
Ampitigoda, Heel Oya,
Bandarawela.

Second Party Respondent – Petitioner - Respondent

Before : Malinie Gunarathne J.

L.T.B. Dehideniya J.

Counsel : Athula Perera with Chaturani de Silva and Harsha de Silva for the First Party - Respondents - Respondents - Appellants.

Priyantha Abeyrathne for the Second Party Respondent – Petitioner - Respondent.

Argued on : 18.01.2016

Decided on : 10.06.2016

L.T.B. Dehideniya J.

This is an appeal from an order of the Learned High Court Judge of Badulla on a revision application filed against the order of the learned Magistrate of Bandarawela. The facts of the case are as follows. The

Bandarawela police filed information in the Magistrate Court under section 66 of the Primary Court Procedure Act stating that a breach of the peace is threatened or likely due to a land dispute arisen between the First Party Respondents - Respondents - Appellants (hereinafter called and referred to as the Appellants) and the Second Party Respondent – Petitioner – Respondent (hereinafter called and referred to as the Respondent). The Appellants case is that they were in possession of the paddy field in question and it was prepared for potato cultivation. The vegetable beds were prepared and fertilizer was applied to plant potato seeds. On 23.01.2006 the Respondent came with several others and disturbed his possession and started preparing the land for paddy cultivation. They state that the 2nd Appellant is the owner of the land and the 1st Appellant is cultivating the land with him. The Respondent stated that his father G.M. Madiris was cultivating the paddy field for about 50 years and after his demise, he was cultivating. The learned Magistrate, after inquiry, pronounced the order in favour of the Appellants. Being aggrieved by the said order of the learned Magistrate, the Respondent presented a revision application to the High Court of Badulla where the Learned High Court Judge set aside the order of the learned Magistrate and pronounced the order in favour the Respondent. This appeal is from that order.

The Appellants raised an objection that under section 66 of the Primary Court Procedure Act the Primary Court / Magistrate Court has no jurisdiction hear and determine a dispute relates to a paddy land. The learned Counsel for the Appellants cited the case of Mansoor and another v. O.I.C. Avissawella Police and another [1991] 2 Sri L·R 75. The learned Counsel for the Respondent's view is that whether it is a high land or a paddy land if the dispute leads into a immediate breach of the peace (threatened or likely) the mere fact that the dispute is to be determined under

a particular Act does not preclude the Magistrate from making an order under section 66(2) of the Primary Court Procedure Act.

Mansoor v. O.I.C. Awissawella (supra) is a case where the tenant cultivator was evicted from the paddy land by the landlord. In that case S.N. Silva CJ. observed that there is a question in the applicability of the Primary Court Procedure Act when a specific law was enacted to protect the tenant cultivators. His Lordship observed that;

> *The phrase "dispute affecting land" is interpreted in section 75 of the Primary Courts Procedure Act to include "any dispute as to the right to the possession of any land.....or as to the right to cultivate any land or a part of a land.....". Therefore, ordinarily, the right of a tenant cultivator to occupy and cultivate a paddy land would come within the meaning of a "dispute affecting land". However, as noted above, the status and rights of tenant cultivators of paddy lands is the subject matter of specific statutory provi-sions. In contrast the procedure in the Primary Courts Proce-dure Act is in the nature of a general provision which applies in relation to every dispute affecting land where a breach of the peace is threatened or likely.*
>
> *The question to be decided in this application is whether a tenant cultivator who is evicted from a paddy land can avail himself of an order made by the Primary Court in a proceed-ing under Part VII of the Primary Courts Procedure Act not-withstanding the remedy provided to him under the provisions of the Agricultural Lands Law and later the Agrarian Services Act.*

After considering several English authorities, His Lordship held that;

> *It has to be noted that there is specific provision in the Agricultural Lands Law and the Agrarian Services Act which gives a right to a tenant as against the landlord and any other person to use and*

occupy the paddy land and to secure restoration of possession if he is unlawfully evicted. These provisions in the Agricultural Lands Law and the Agrarian Services Act are in the nature of a special right and a remedy for the infringement of that right. Therefore, I hold that the machinery under the Agricultural Lands Law and the Agrarian Services Act is the only one available to a tenant cultivator of paddy land to secure and vindicate his tenurial rights. The general procedure obtaining in Part VII of the Primary Courts Procedure Act with regard to disputes affecting land where a breach of the peace is threatened or likely, is not applicable in such a situation.

The case before us is not on an eviction of a tenant cultivator. The Appellants state that the 2nd Appellant is the owner of the land by deed marked A. According to the Appellants, they are cultivating their own land. Disturbing their possession does not come within the meaning of evicting a tenant cultivator. The Respondent's case is that his father cultivated the paddy land for a long period of time and after his death, the Respondent cultivated. He doesn't explain on what basis his father cultivated the land, whether as the owner or as a tenant cultivator. The affidavit of the Respondent as a whole, gives the impression that he is claiming the land as the owner. His first statement to the police also leads to the same conclusion. He said to the police that his father was the owner, and was cultivating the land, and on his death, his mother became the owner, and on her advice the Respondent started cultivating. As such, there is no eviction of a tenant cultivator by a landlord. This is only a dispute in relation to the possession of a land. The decision in the case of Mansoor v. O.I.C. Awissawella Police has no application to this case. This case can proceed under Part VII of the Primary Court Procedure Act. I rule out the objection.

The Appellants' case is that they were in possession of this land. The 2nd Appellant claims that he became the owner of the land by the deed

marked A. The title is not a relevant fact in an application under section 66. It is relevant only to prove on what basis he possesses the land. In the present case, the Respondent stated in the statement to the police dated 23.01.2006 that his father G. H. Madiris was the owner but in his affidavit, he is silent on the basis of the possession of him or his predecessor, his father. He states that his father was in possession and with his demise, he entered in to possession. The 2nd Appellant states that he, as the owner, possessed the land. The Appellants has a stronger case than the Respondent.

In response to the First Appellant's complaint to the police that their possession was disturbed by the Respondent on 23rd January 2006, the police made an inquiry on the same day and the Respondent's statement was recorded. In that statement, he has stated that on the demise of his father, his mother adviced him to prepare the land for paddy cultivation. This proves that the Respondent was not in possession until his father's death. The next question that has to consider is that whether the Appellants have proved that they were in possession or whether the Respondent proved that his father was in possession for the two months prior to the filing of the information in the Magistrate Court.

After institution of this action, the Respondent made an application *ex=parte* to the Magistrate Court and obtained an order for the police to re-inquire the matter and to record the statements of several persons. Consequences to this order, the police recorded statements and submitted a report to the Magistrate Court. The Respondent is relying on those statements to prove his case. Firstly the Respondent shouldn't have made an application ex-parte after institution of the action. Once the action is instituted, all applications must be made with notice to the opposing party unless the law provided that an application can be made ex-parte. Part VII of the Primary Court Procedure Act does not provide for an application of this nature. It is the inherent power of the Court to do justice that gives

power to issue an order on this nature. Without giving notice, an application should not have made. Secondly, the Court should not have issued an order without giving a hearing the opposing party. The Appellants were denied the opportunity of tendering the witnesses to the police officer to record statements in his favour. Under these circumstances, there is no evidentiary value of the statements made at the second inquiry.

The parties tendered certain letters issued by several persons in support of their respective cases. These letters were prepared for the purpose of this case. The authors of those letters are not before Court to testify to the veracity of them. Even the witnesses, who submitted affidavits in support, were not subjected to cross examination. The evidentiary value of these documents is very low. The documents issued in the ordinary cause of business have a higher evidentiary value than the documents specially prepared for this case. The document marked as J and produced by the Appellants is a certified extract of the Paddy Land Registry. It is an official document prepared and kept in the custody of the Agrarian Service Center Bandarawela. This registry is prepared in the ordinary cause of business. Time to time paddy land registry is amended and it is done by the officials after an inquiry. According to the document J, the last amendment was done in 17.11.2004. Thereafter no amendment effected. This document indicates that the 2nd Appellant is the owner cultivator of the land in question, which proves that it was in the 2nd Appellant's possession. The 2nd Appellant has paid the acreage taxes for the disputed land. The receipt marked B is for the years of 2000/2001/2004/2005 paid on 22.08.2003 and the receipt marked C is paid on 09.01.2006. These are also documents issued in the ordinary cause of business. The Respondent was trying to say that these documents were prepared for this case by the Appellants, but was unable to submit any evidence to substantiate that proposition. The Respondent's father too had paid taxes for the land, but it was several years prior to the filing of the

information under section 66 of the Primary Court Procedure Act. The last payment was in year 2004, but the 2nd Appellant has paid more recently, in the year of 2006 but prior to the dispute being arisen. The possession immediately prior to two months from the date of filing the information is considered in these applications. Therefore the documents support the Appellants case that they were in possession and the Respondent disturbed them.

The Learned High Court Judge's conclusion was based on the documents which were prepared for this case and the veracity was not tested, but the documents prepared and maintained in the ordinary cause of business speak otherwise. Therefore, I cannot agree with the learned High Court Judge's findings. The learned Magistrate has considered the evidence and has come to the correct finding.

Accordingly, I set aside the order of the Learned High Court Judge dated 13.09.2007

The appeal allowed with costs fixed at Rs. 15,000/-

Judge of the Court of Appeal

Malinie Gunarathne J.

I agree.

Judge of the Court of Appeal