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

Court of Appeal case No.
CA (PHC) 178/2003

High Court of Hambanthota
case No. 28/2001

Magistrate Court of
Hambanthota case No. 41535

P.G Heenhamy,
Helakada, Angunakolapelessa.

Respondent - Petitioner – Appellant

Vs.

Assistant Commissioner of Agrarian Development,
Agrarian Development Office,
Hambantota.

Plaintiff - Respondent - Respondent

Before : P.R.Wlgama J.

: L.T.B. Dehideniya J.

Counsel : Oliver Jayasooriya for the Respondent - Petitioner - Appellant

Plaintiff - Respondent - Respondent absent and unrepresented

Argued on : 16.03.2016

Written Submissions of the Respondent – Petitioner - Appellant filed on : 19.05.2016

Written submissions of the Plaintiff – Respondent - Respondent : not filed

Decided on : 17.06.2016

L.T.B. Dehideniya J.

This is an appeal from the High Court of Hamabanthota. The Plaintiff Respondent – Respondent (hereinafter called and referred to as the Respondent) made an order under section 18 (2) and (3) of the Agrarian Services Act No. 58 of 1979 amended by Act No. 04 of 1991, to evict the Respondent Petitioner Appellant (hereinafter called and referred to as the Appellant) from a agricultural land on a complaint made by one Edvin Prathapasinghe Rathnayake. The appellant, being disobeyed the order, the Respondent instituted action in the Magistrate Court of Hamabanthota to evict the Appellant. The learned Magistrate issued the eviction order. Being dissatisfied with the order, the Appellant moved in revision in the High Court of Hambanthota where the application has been dismissed. This appeal is against that order.

The Appellant, before the proceeding for eviction being instituted in the Magistrate Court by the Respondent, filed application in the High Court of Hambanthota case No. H.C.A.58/97 seeking for a mandate in the nature of writ of certiorari to quash the order of the Respondent. The Learned High Court Judge dismissed the application. Being aggrieved by the said order, the Appellant appealed against it to the Court of appeal. The Appellant states that he served the notice of appeal on the Respondent. The appeal is still pending, and not yet taken up for argument. The present case is the appeal against the order of the Learned High Court Judge in the revision application.

The Respondent conducted the inquiry and the order was made under the provisions of the Agrarian Services Act and after the order was made and before eviction proceeding was instituted, the said Act was repealed and the Agricultural Development Act No. 46 of 2000 was enacted. Can that the Respondent institute proceedings under the Agricultural Development Act

to evict the Appellant? Section 99 of the Agricultural Development Act has enacted the transitional provisions. The section provides for the continuation of the pending cases which were filed under Agrarian Services Act, under the new Agricultural Development Act. In the present case, the decision to evict the Appellant was made under the Agrarian Services Act and there is no any provision to invalidate such decisions in the Agricultural Development Act. Therefore, the order of the Respondent to evict the Appellant from the agricultural land stands valid. There is no any impediment in instituting action to enforce such decisions made under the Agrarian Services Act.

Section 6 (3) of the Interpretation Ordinance also provides that anything duly done shall not be deemed to have affected by the repeal law unless there is express provision. The section reads;

> *(3) Whenever any written law repeals either in whole or part a former written law, such repeal shall not, in the absence of any express provision to that effect, affect or be deemed to have affected-*
>
> *(a) the past operation of or anything duly done or suffered under the repealed written law ;*
>
> *(b) any offence committed, any right, liberty, or penalty acquired or incurred under the repealed written law ;*
>
> *(c) any action, proceeding, or thing pending or incompleted when the repealing written law comes into operation, but every such action, proceeding, or thing may be carried on and completed as if there had been no such repeal*

In the case of Benedict and Others v. Monetary Board of The Central Bank of Sri Lanka and others (Pramuka Bank Case) [2003] 3 Sri L R 68, section 6 (3) of the Interpretation Ordinance has been considered and held that;

Section 6(3) (b) of the Interpretation Ordinance, protects the vested rights acquired under the repealed Act, in the absence of any compelling language within the four corners of the repealing Act to a deliberate decision on the part of Parliament to impair those rights, the Monetary Board was therefore properly constituted.

In the present case the Respondent issued the eviction order on a complaint made by Edvin Prathapasinghe Rathnayake. It is the vested right of the said complainant that the Appellant to be evicted from the agricultural land. The Respondent has to give effect to the order by instituting eviction proceedings in courts.

My view is that the Respondent is not prevented by law in instituting action in respect of an order made under the repealed law.

The Appellant strenuously contested that the Respondent has not followed the circular no. 356/91 dated 25.03.1991 issued by the Commissioner of Agriculture and therefore the proceedings instituted in the Magistrate Court for eviction shall be dismissed. Paragraph 32 of the said circular instructs the assistant commissioners not to institute proceedings for eviction if there is an appeal or a revision application from the order of the assistant commissioner or his inquiring officer pending before the board of review, the Court of Appeal or the Supreme Court. This circular has no statutory force. It is only a directive/instructive circular issued to organize the staff and the procedure of the offices of the assistant commissioners. The final paragraph states so.

The Appellant cited the case of Kanthilatha v. Wimalaratne and others [2005] 1 Sri L R 411 at 416 in support of his contention that the learned Magistrate should not have issued the eviction order pending the appeal. It was an appeal from the order of the High Court in a revision

application filed in respect of an order by the learned Magistrate. In that case Gamini Amarathunga J. observed that:

> *As stated above, a party dissatisfied with the order made by the High Court in the revision application has a right of appeal to this Court against such order. In terms of the Court of Appeal (Procedure for Appeals from the High Courts) Rules of 1988, such appeal has to be filed in the High Court within 14 days from the order appealed against. Once an appeal is filed, the High Court has to forward its record together with the petition of appeal to the Court of Appeal. In the meantime, as has happened in this case, the party who is successful in the High Court may make an application to the original Court, supported by a certified copy of the order of the High Court, to execute the order of the High Court. Several revision application which have come up before this Court indicate that in such situations, some original court judges have taken the view that in the absence of a direction from the Court of Appeal directing the stay of execution pending appeal, the order appealed against is executable. With respect, this is an erroneous view. It appears that the learned Magistrate in this case has fallen into the same error when order was made to execute the order of the High Court pending the receipt of an order from the Court of Appeal. There is no provision or a necessity for issuing a direction to stay execution. The filing of an appeal ipso facto operates to suspend the jurisdiction of the original court to execute the order appealed against.*

The present case is an appeal from the order of the Learned High Court Judge on a revision application filed against an order of the learned Magistrate to evict the Appellant. There are no steps taken by the Respondent to execute the order of the Magistrate Court. Therefore the rational of the Kanthilatha case (supra) does not apply to this case. On the

other hand the appeal that the appellant is stating is not this appeal, but the appeal filed against the order of the Learned High Court Judge in the application for a prerogative writ. Therefore, the Kanthilatha case has no application at all.

Under these circumstances I see no reason to interfere with the finding of the Learned High Court Judge.

The appeal is dismissed without costs.

Judge of the Court of Appeal

P.R.Walgama J.

I agree.

Judge of the Court of Appeal