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

D.L. Jayasinghe Arachchi,
'Sampatha' Ittademaliya,
Walasmulla. (dead)

CA (PHC) No: 194/2009 **Plaintiff**

CA (PHC) No: 195/2009

Provincial High Court
of Hambantota Case No: 30/2007

Vs.

01. P. Don Migel,
Palukotanwala, Ambalanthota Road,
10th Mile post,
Suriyawewa. (dead)

01A. Abeysinghe Gamachchige
Wimalawathi, Palukotanawala,
Ambalanthota Road,
10th Mile Post, Suriyawewa.

02. Hettiarachchige Gunapala,
'Chamara' Iththademaliya,
Walasmulla.

Respondents

AND NOW

Hettiarachchige Gunapala,
'Chamara' Iththademaliya, Walasmulla.

2nd Respondent - Petitioner - Appellant

Vs.

Jayasingha Arachchige Chandradasa,
'Chamara' Iththademaliya, Walasmulla.

Substituted Plaintiff - Respondent - Respondent

03. P. Don Migel,
Palukotanwala, Ambalanthota Road,
10th Mile post,
Suriyawewa. (dead)

01A. Abeysinghe Gamachchige
Wimalawathi, Palukotanawala,
Ambalanthota Road,
10th Mile Post, Suriyawewa.

Respondent - Respondents - Respondent

Assistant Commissioner of Agrarian Development,
The Officer of the Agrarian Development,
Hambanthota.

Respondent - Respondent

Before : P.R.Walgama, J
: L.T.B. Dehideniya, J

Counsel : Gamini Hettiarachchi for the 2nd Respondent – Petitioner – Appellant.

: Asthika Devendra with Lilan Warusuvithana for the Plaintiff – Respondent – Respondent.

Argued on : 16.02.2016

Decided on: 21.06.2016

CASE NO- CA (PHC)- 194/ 2009- JUDGMENT- 21.06.2016

P.R.Walgama, J

The instant appeal lies against the order of the Learned High Court Judge dated 08.10.2009, in the Provincial High Court holden at Matara, by which order the Learned High Court has dismissed the application of the 2nd Respondent – Petitioner, for a Writ of Certiorari to quash the decision of the Respondent, the Assistant Commissioner of Agrarian Development, Hambantota.

The facts emerged from the petition to the High Court by the 2nd Respondent – Petitioner reveal thus;

A complaint was made by the original Plaintiff to the Assistant Commissioner of Agrarian Services in terms of Section 5(9) of the Agrarian Services Act No. 58 of 1979, amended by Act No. 4 of 1991, complaining that the tenant cultivator namely Don Migel had let the paddy field to the Appellant without the consent of the Plaintiff (the owner of the paddy field)

In pursuant to the above application of the Plaintiff an inquiry was held by the Assistant Commissioner of Agrarian Services delivered his order on 1.1.2007, and determined that the Appellant is not the tenant cultivator in the disputed paddy land, and he had entered illegally.

Being aggrieved by the said order the 2nd Respondent – Appellant has applied to the High Court for a writ of Certiorari to quash the above decision of the Assistant Commissioner of Agrarian Services.

The original Plaintiff in this case filed an application with the Assistant Commissioner of Agrarian Services of Hambantota, in terms of the Section 5 (9) of the Agrarian Services Act No. 58 of 1979 as amended by the Act No. 04 of 1991.

The Section 5 (9) of the above Act states thus;

"where a person (referred to as the lessor) lets any extent of paddy land to any other person (referred to as lessee) and the lessee does not become the tenant cultivator thereof, then if the lessee lets such extent by reason of the fact that he is not the cultivator thereof, then if the lessee lets such extent to any person (referred to as the subtenant) and the subtenant becomes the tenant cultivator of such extent by reason of his being the cultivator thereof, the subtenant's rights as the tenant cultivator of such extent shall not be affected in any manner by the termination of the lease granted by the lessor to the lessee" It is to be noted that the Plaintiff in this case and another who also claimed ownership to the disputed land had complaint to the Assistant

Commissioner, of Agrarian Services against the Respondent-Petitioner for having entered the disputed paddy land and worked the same.

Being aggrieved by the said order of the Respondent the 2ND Respondent – Appellant moved the High Court to exercise the jurisdiction to issue a mandate in the nature of a writ of certiorari to quash the said order of the Respondent.

The Appellant had adverted Court to Section 11(3) of the Agrarian Services Act and stated that the Plaintiff and the other person called K.P.Don Dionis have not made application in terms of Section 11(3) of the said Act.

Section 11(3)

"any transfer or cession by the tenant cultivator in violation of the provision of Subsection (1) or (2) shall be null and void and shall render the person in occupation of such extent to be evicted in accordance with the of provisions of Section 6 and on such eviction the provisions of subsection 5 of section 4 shall apply."

It is also alleged by the 2ND Petitioner-Appellant that the Plaintiff has not proved in evidence that he is the land lord of the paddy land in suit. Further it is asserted by the Petitioner – Appellant that as per document marked X15 he is the rightful tenant cultivator of the disputed paddy land.

Pursuant to the above determination of the Respondent a quit notice has been sent by and same has been marked as X16.

Further it is brought to the notice of Court that the Petitioner – Appellant is still the tenant cultivator of the paddy field in suit.

In opposing the said application of the Petitioner- Appellant, it is the categorical position of the Respondent that the Petitioner- Appellant was a trespasser who entered the paddy field in violation of section 5(9) of the Agrarian Services Act No. 58 of 1979 (corresponding Section 7(10) of the Agrarian Development Act No. 46 of 2000)

That the Petitioner was never substituted as a Sub Tenant Cultivator by non of the owners of the paddy field or by any other tenant cultivator,

That the Petitioner's predecessor Tenant Cultivator under whom he is claiming his rights had left the paddy land and settled down in Suriyawewa area 17 years before the Petitioner enrolled his name illegally in the Agricultural Land list.

The Respondent has adverted Court to the fact that the Petitioner- Appellant had refrained from adducing any evidence at the afore said inquiry nor did he produce any of the documents which he moves to tender before this court.(V1-V8).

It is alleged by the Plaintiff- Respondent that the Petitioner – Appellant has failed to pay rent through out, to the lawful owners by 2ND Petitioner – Appellant

The Learned High Court Judge in dealing with the contentions of the Petitioner – Appellant had recognised the fact that the legal position of Section 99(2)(e) of No. 46/2000 wherein the

powers vested with the Assistant Commissioner of Agrarian Services under the Agrarian Services Act No. 58 of 1979, is embodied in Act No.46 of 2000.

Section 99(2)(e) of No. 46/ 2000 states thus:

" all proceedings pending before an inquiring officer or a Board of Review under the provisions of the Agrarian Services Act No. 58 of 1979 on the day preceding the date of commencement of this Act, shall be deemed to be proceedings instituted before the corresponding Agrarian Tribunal established by this Act, and may be continued and concluded before such Agrarian Tribunal under this Act."

Therefore it is crystal clear that any inquiry commenced before the new Act came to being the same inquiry could continue in terms of the present Act too.

Hence the Learned High Court Judge was of the view that the argument planked by the Petitioner - Appellant on issue of conversion of the section 5(9) 11(3) and to act in terms of Section 99(2)(e) is now recognised and there is no merit in the said argument of the Petitioner - Appellant.

It is apparent from the facts surfaced in the Petition of the Petitioner - Appellant that he has forcibly entered this paddy field after his father in law has left the same.

It was the observation of the Learned High Court Judge that the Petitioner has entered his name illegally in agricultural land list as a tenant cultivator and as such he was never the tenant cultivator under any of the owners of the land.

It is also being noted that the Petitioner – Appellant had objected to the amalgamation of two applications made by two owners to the same land to eject the Petitioner – Appellant from subject land. But the Learned High Court Judge has held the view that the said amalgamation is not in violation of any law relating to the above subject and thus held that the Commissioner has correctly amalgamated the said inquires.

Therefore in the above setting it is abundantly clear that the Petitioner – Appellant has failed to establish that he is the tenant cultivator of the land in issue, besides the objection as to the amalgamation of the two inquires has no merits and should be rejected accordingly.

For the reasons set out herein before this Court is of the view that the Appeal should fail

Accordingly the appeal is dismissed subject to a cost of Rs. 5000/-

JUDGE OF THE COURT OF APPEAL

L.T.B. Dehideniya, J
I agree,

JUDGE OF THE COURT OF APPEAL