

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

K.G.Tikiri Appu Rajasekara,
Danagama, Mawanella.

Petitioner Appellant

Vs.

Court of appeal case no.
CA/PHC 244/2006

H.C. Kegalla case no.
2043 (REV)

1. R.A,N.D.Madduma Appu Alias Gunarathne,
Danagama, Mawanella.
2. Assistant Staff Officer,
Agricultural Development Department,
Kegalla.
3. Assistant Commissioner,
Agricultural Development Department,
Kegalla.

Respondent Respondent.

Before : P.R.Walgama J.

: L.T.B. Dehideniya J.

Counsel : D.M.G.Dissanayake for the Petitioner Appellant.

: M.D.J.Bandara for the 1st Respondent Respondent.

: Nyomi Kahawita SC for the 2nd and 3rd Respondents
Respondents

Argued on : 20.05.2016

Decided on : 14.09.2016

Decided on : 14.09.2016

L.T.B. Dehideniya J.

This is an appeal from the High Court of Kegalla. The facts of this case are briefly as follows. The 1st Respondent Respondent (hereinafter called and referred to as the 1st Respondent) is the landowner of the paddy field named Lidakumbura. The Petitioner's (hereinafter called and referred to as the Petitioner) father K.P.Muhandiram was the tenant cultivator under him until his demise on 09.11.2000. After his death, his son the Petitioner started cultivating the paddy land without the 1st Respondent's consent. The 1st Respondent made an application to the Commissioner of Agrarian Service under section 7(10) of the Agrarian Development Act no. 46 of 2000. The Petitioner submitted that on the death of his father the rights of the tenant cultivator devolved on him. The Commissioner, after an inquiry, decided that the Agrarian Development Act no. 46 of 2000 is silent on devolution of rights of the tenant cultivator and therefore the Petitioner does not become the tenant cultivator by operation of law. The Petitioner filed an application for a writ of certiorari to quash the decision of the Commissioner in the High Court of Kegalla which was dismissed. Being aggrieved by the said decision the Petitioner presented this appeal.

The first issue that has to be considered is whether the rights of his father, the tenant cultivator, devolve on the Petitioner. The fact that the Petitioner is the only surviving son of Muhandiram and the wife is not among living is not disputed.

The Agrarian Development Act is silent on the devolution of tenant cultivator's rights. The section 8(1) of the Agrarian Services Act provided

for the succession of the tenant cultivator's rights but that was repealed by the present Agrarian Development Act no.46 of 2000. When the new Act was enacted, the section providing the succession of the tenant cultivator's rights has been removed. Under these circumstances, the Petitioner does not become the tent cultivator on the death of his father by operation of law.

The petitioner's main argument is that the application filed under section 7(10) of the Agrarian Development Act no. 46 of 2000 is misconceived. The section reads thus,

(10) Where a person (hereafter in this subsection referred to as the "lessor") lets any extent of paddy land to any other person (hereafter in this subsection referred to as the "lessee".; and the lessee does not become the tenant cultivator of such extent by reason of the fact that he is not the cultivator thereof. then if the lessee lets such extent to any person (hereafter in this subsection referred to as the "sub-tenant cultivator") and the sub-tenant cultivator become the tenant cultivator of such extent by reason of his being the cultivator thereof, the subtenant's right 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 :

Provided, that the lessee shall not let such extent of paddy land to a sub-tenant cultivator unless he"

- (a) obtains the consent in writing of the owner of such extent of paddy land ; and*
- (b) thereafter notifies the Agrarian Development Council within whose area of authority such extent of paddy land wholly or mainly lies ;*

Provided further that where any extent of paddy land is let by a lessee to a sub-tenant cultivator without obtaining the consent in writing of the owner of such extent of paddy land such sub-tenant cultivator shall not be entitled to any of the rights of a tenant cultivator in respect of such extent of paddy-land. The Commissioner-General, after inquiry, shall in writing order that the sub-tenant cultivator shall vacate such extent of paddy land on or before such date as shall be specified in that order and if such sub-tenant cultivator fails to comply with such order he shall be evicted from such extent in accordance with the provisions of section 8 and the landlord shall be entitled to cultivate such extent of paddy land.

The Petitioner's argument is that he is not a sub-tenant cultivator and there is no lease agreement. Therefore this section does not apply.

Section 7 of the Act spelt out the procedure for evicting a person cultivating a paddy land after an inquiry by the Commissioner. Sub section 10 protects the rights of a sub tenant cultivator but that protection offered only to the persons coming within the proviso of that section i.e., the person obtains the consent in writing of the owner of such extent of paddy land and thereafter notifies the Agrarian Development Council within whose area of authority such extent of paddy land wholly or mainly lies. In the present case, the Petitioner or his father has not obtained the prior consent of the 1st Respondent.

Section 6(1) of the Act provides that a lessee becomes a tenant cultivator. The section reads

(1) When a person who leases out an extent of paddy land under an oral or written contract such person shall, if he is the cultivator of such land and is a citizen of Sri Lanka, be the tenant

cultivator of such extent of paddy land for the purposes of this Act,

The Petitioner's argument is that there is no oral or written contract and he does not come within the ambit of this section. His father was the tenant cultivator who comes within this section. The letting is explained in the interpretation section, section 101;

"let" with reference to any extent of paddy land, means to permit any person, under an oral or written agreement to occupy and use such extent in consideration of the performance of any service by him or the payment of rent consisting of a sum of money or a share of the produce from such extent;

The Petitioner's father was cultivating the paddy land and paid the rent to the 1st Respondent. Therefore the petitioner's father cannot sub-let the paddy land without adhering to the provisions to the proviso of section 7 (10). The Petitioner cannot come in to the paddy land under his father, even after his demise, as a successor, where such succession is not provided by law. On the other hand the Petitioner at the inquiry before the Commissioner stated that he got the tenant cultivator's rights during the life time of his father. He said that his father was not well and he started helping his father and later he became the tenant cultivator.

At page 120 of the brief, (පෙ 2 ඇ)

මට පියා සිටින කාලේ අද අයිතිය ලැබුණා. පියා ලෙඩ වූ පසු මම තමයි වගාවට උදව් කළේ. මගේ පියා මිය ගියේ 2000 වර්ෂයේ.

At page 121 cross examination,

ප්‍ර. පියා කොපමණ කාලයක් අසනීපයෙන් සිටියාද?

උ. අවු. 6, 7 ක් පමණ.

Under these circumstances we see no reason to interfere with the findings of the learned High Court Judge.

Appeal is dismissed.

Judge of the Court of Appeal

P.R.Walgama J.

I agree.

Judge of the Court of Appeal