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

Bank of Ceylon,

No.04, Bank of Ceylon Mawatha,

Colombo 01

Applicant

Case No.CA (PHC) 107/2005

PHC-Anuradhapura 35/2001 (Rev)

Vs

GunapalageJayarathne,

Inoka Stores,

Anekattiya,

Poonewa.

Respondent

And

GunapalageJayarathne,

Inoka Stores,

Anekattiya,

Poonewa.

Respondent – Petitioner

Bank of Ceylon,

No.04, Bank of Ceylon Mawatha,

Colombo 01

Applicant – Respondent

And now between

Gunapalage Jayarathne,

Inoka Stores,

Anekattiya,

Poonewa.

Respondent – Petitioner- Appellant

Bank of Ceylon,

No.04, Bank of Ceylon Mawatha,

Colombo 01

Applicant– Respondent- Respondent

Before : K.K.Wickramasinghe, J.

P.PadmanSurasena, J.

Counsel : Shanaka Ranasinghe (PC) for the Appellant

ASG Neil Unambuwa (PC) for the Respondent

Argued on : 10/07/2017

Written submission of the Respondent submitted on : 24/10/2017

Written submission of the Appellant submitted on : 29/08/2017

Decided on : 15.11.2017

Judgement

K.K.Wickramasinghe

The Respondent Petitioner Appellant (herein after referred to as the Appellant) in this case has preferred this appeal to this court after being aggrieved by the order dated 13.10.2004 by the Learned High Court Judge of Anuradhapura and the order dated 14.05.2001 of the Learned Magistrate Court of Anuradhapura.

Facts of the case

The Applicant Respondent Respondent (Bank of Ceylon) (herein after referred to as the Respondent) had filed an application in the Magistrate Court of Anuradhapura against the Appellant on 25.04.2000 to recover monies due on an Agricultural loan.

The Appellant has agreed to the fact that he has borrowed the sum of Rs.450,000/- from the Respondent Bank in order to purchase a four wheel tractor and to develop the business. The Respondent has given the requested loan facility to the Appellant on 12.11.1993. The Respondent has submitted that the Appellant has settled part of the loan of Rs.190,960/- and has defaulted to pay a sum of Rs.259,040/- and the interest component. Under Section 29(3) of the Agrarian Services Act No.58 of 1979 as amended by Act No.09 of 1990 the Respondent Bank has submitted the relevant certificate marked as "A" , indicating a sum of Rs.415,678.28/- due to be recovered from the appellant.

The Applicant in his written submission has stated that in terms of Sec.29(1) of the Agrarian Services Act the Respondent Bank is entitled to recover the relevant loaned money with interest as a fine, if not prescribed. Further the appellant has taken several objections against the said recovery of money.

The learned Magistrate of Anuradhapura has considered all aspects of the case and has pronounced an order dated 14.05.2001. The learned Magistrate in his order has categorically rejected the appellants Objection in regard to prescription of the application of the Respondent Bank and has stated that the Respondent Bank has made the application within the period.

The Appellant has taken another objection that the application cannot be maintained in terms of Sec.29(1), 29(3), 29(4),29(5),27(1),27(2) and 27(3) of the Agrarian Services Act.

The Learned Magistrate has referred to the elaborated interpretation set out in Sec.68 of the Agrarian Services Act, word "agricultural activity" thus:

"Agricultural Activity means any activity involving agriculture and includes the use of machinery and equipment used in such activity involving minor irrigation work."

The Learned Magistrate in his Order has emphasized that according to the application for the loan marked as X4, *"the Appellant has made the Loan application for the development of his trade and for the purchase of a tractor"*. He further points out that the Appellant in his application has projected to the Respondent Bank that he is the owner of eleven (11) acres of land. Accordingly, the learned Magistrate has stated that the loan application made to the Respondent Bank is for the purpose of an agricultural activity and also has observed that the machinery and the equipment have been put to the use of an agricultural activity. Therefore the learned Magistrate has rejected the objections taken up by the appellant on Sec.27 and 29 of the Agrarian Services Act.

The Learned Magistrate has observed that documents marked as "X4" and "X1" is sufficient evidence to prove that the Appellant has entered into a verbal and written loan agreement and has concluded that a loan granted on verbal agreement too could be enforced in terms of Sec.27(1) of the Agrarian Services Act. Further the Learned Magistrate has observed documents marked as "X4" and "X5" and has concluded that it is evident that the loan has been granted on a loan agreement and therefore has opted to reject the objection of Appellant.

The Learned Magistrate has looked into the objection of the appellant on the basis that the Agrarian Services Act No.58 of 1979, has been repealed by Act No,46 of 2000. However, the Learned Magistrate has pronounced, referring to the Sec.99(2)(g), the use of Act No.58 of 1979. Moreover, it is pertinent to note that the amended application was made to the Magistrate Court in 2001, by which time the Act No.46 of 2000 was in operation.

Further it must be taken in to account that the Appellant being purportedly being aggrieved by the Order given by the Learned Magistrate has failed to appeal to the High Court of Anuradhapura and has only filed a revision application without setting out the exceptional circumstances.

The Learned High court Judge of Anuradhapura has pronounced his order dated 13.10.2004 confirming that the Learned Magistrate was correct in holding that Sec.99(2)(g) of Agrarian Act No.46 of 2000, provides for hearing all the cases instituted under Agrarian Services Act No.58 of 1979 and therefore the objection of the Appellant has been rejected by the Learned High Court Judge.

Further, the Learned High Court Judge has affirmed the position taken up by the Learned Magistrate that in terms of Se 29(3) of the Agrarian Services Act, a valid certificate has been submitted to court by the Regional Manager of the Respondent Bank and thus the 3rd objection taken up by the Appellant was rejected by the Learned High Court Judge.

The Learned High Court Judge has observed that the learned Magistrate has considered correctly that the loan is an agricultural loan in terms of the documents produced to court and that the Appellant has obtained the loan facility to purchase s a tractor and to develop his business.

Therefore it is evident;

1) That the loan is to be used for the purpose of the development of the business and to purchase a tractor.
2) That the Appellant in his application has categorically submitted to the Respondent Bank that he owns 11 acres of land.
3) That the Appellant in order to procure the loan facility has categorically submitted to the Respondent Bank that he has previously obtained loans of Rs.70,000/-, Rs.35,000/- and Rs.100,000/- and has already settled.

The Appellant has entered into a written agreement, marked as X5, which clearly establishing the following:

1) Appellant has primarily identified himself as a cultivator in the agreement, in order to secure the loan facility.
2) Appellant has applied for a loan of Rs.450,000/-.
3) Appellant in the written agreement has categorically expressed in writing that this loan is required for the purpose of purchasing a four wheel tractor and trailer
4) Appellant has agreed to strictly abide by the terms and conditions.

Accordingly it is evident by the perusal of loan agreement marked as "X5", that the Appellant has obtained the loan facility of Rs.450,000/- exclusively and only to purchase a four wheel tractor and trailer. The Loan agreement does not show any evidence or material to establish that the loan facility agreement has been

extended for any other use or purpose, other than the purchasing of a four wheel tractor and a trailer.

The Loan account clearly indicates the payments the Appellant has made and the default payments by the Appellant in the document marked as "X 1".

It is also evident that on the appellant defaulting to make payments, the Respondent Bank has sent a Letter of Demand dated 30.03.2000, requesting the Appellant to pay Rs.259,040/- and the interest component.

It is also observed that the provisions of the Prescription Ordinance are not applicable in this instance. The Agrarian Services Act, has not limited in any manner the institution of cases for the recovery of money due on Loan Agreements extended for agricultural activities. By the perusal of the provision of the Agrarian Services Act, it is apparently clear that no limitation or prohibition has been introduced. However the only requirement in terms of the Agrarian Services Act is the submission of a certificate. It is noted that the required certificate has been submitted to the Magistrate Court by the Respondent Bank and the Learned Magistrate has accepted same and ordered the Appellant to pay the monies due to the Respondent.

In the **case No.313/93**, it was held that, *"considering payments made and letter of demands sent, the action is not time barred."*

In Cases of **Achchuweli Multi-Purpose Cooperative Society VsBalasingham 72 NLR 180**, **MedisVs Inland Revenue Commissioner 61 NLR 95**, **DorayappaVs Jaffna Municipal Commisioner 73 NLR 230** and in the case of **Abdul AlleelVs Jaffna Vice-Chairman 68 NLR 168** it has been held that :

" When a Government Agent issues to a magistrate a certificate in terms of Sec.4(1) of the Heavy Oil Motor Vehicles Taxation Ordinance for the recovery of unpaid tax, the Magistrate court is mere a collecting agency and it is not necessary that a charge should be framed against the accused."

PussadeniyaVs Wilfred Chairman Urban Council Hatton 80 NLR 270 it was held:

"Where an application made under sec.183(5) of the Urban Council Ordinance to a Magistrate to recover a surcharge imposed b the Auditor General, the Magistrate court is merely a collective authority and nothing else. Questions of prescription and the correctness of the surcharge are beyond its jurisdiction."

In the case of **SendrisVs Assistant Commissioner of Agrarian Services (1991) 1 SLR 212** and Another decided on December 12,1990, held by Sarath N Silva J;

"The Prescription Ordinance regulates the prescription of actions before a civil court and does not apply to proceeding under the Agrarian Services Act. Therefore, the position taken up by the appellant does not hold water, but should necessarily fail."

For the above mentioned reasons, we see no merit of the application of the Appellant. Thus the judgment of the learned High Court Judge dated 13.10.2004 and the order of the Learned Magistrate dated 14.05.2001, is affirmed. Thereby the Appellant is liable to pay the sum of Rupees 415,678.23/- to the Respondent Bank.

This Appeal is accordingly dismissed with costs.

JUDGE OF THE COURT OF APPEAL

P.Padman Surasena,J.

I agree

JUDGE OF THE COURT OF APPEAL