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

Ven. Dombawela Dammika Thero,

Rajamaha Viharaya,

Kolawenigama.

1st Respondent-Appellant

01. Manikpurage Piyadasa.

Mauldeniya, Kolawenigama.

Petitioner-Respondent

Case No. CA(PHC) 48/2004

High Court Matara Case No. 57/2001 (Writ)

02. Inquiry Officer – Agrarian Services,
Mrs. Y.R.K. Nanayakkara,
Attoreny-at-Law,
Fort, Matara.

03. Assistant Commissioner of Agrarian Services –
Matara District,
Presently
Assistant Commissioner of Agrarian
Development – Matara District,
Nupe, Matara.

Respondents-Respondents

Before: K.K. Wickremasinghe J.

Janak De Silva J.

Counsel:

Shantha Karunadhara with Gaithri De Silva for 1st Respondent-Appellant

Jayantha Siriwardena for Petitioner-Respondent

Written Submissions tendered on:

1st Respondent-Appellant on 10.07.2018

Petitioner-Respondent on 11.05.2018

Argued on: 21.03.2018

Decided on: 31.07.2018

Janak De Silva J.

This is an appeal against the judgement of the learned High Court Judge of Matara dated 17.11.2003.

The 1st Respondent-Appellant (Appellant) made an application citing the Petitioner-Respondent (Respondent) as a party under section 18(1) of the Agrarian Services Act No. 58 of 1979 as amended (Act) to obtain arrears of rent. The application was in respect of a paddy land named "Midelladola Aswedduma" 1 Acre 2 Roods in extent. The Appellant made the application acting as the Viharadhipathi and Trustee of Rajamaha Viharaya, Kolawenigama. The application was dated 01.04.1993 and the period in arrears was said to be from 1977.

The 2nd Respondent-Respondent (2nd Respondent) held an inquiry into this application at which the Appellant agreed to limit the claim of arrears of rent to 1993. After inquiry the 2nd Respondent held that the Appellant was the owner of Midelladola Aswedduma and that the Respondent was the tenant cultivator. She made further order directing the Respondent to pay the arrears of rent set out in the order.

The Respondent sought a writ of Certiorari from the High Court of Matara to quash the said order of the 2nd Respondent which was granted by the learned High Court Judge. Hence this appeal by the Appellant.

The Respondent denied that Midelladola Aswedduma was owned by the Rajamaha Viharaya, Kolawenigama. It was his position that the said paddy land was owned by his father Manikpurage Uraneris who was at one time the owner cultivator and that he inherited it from his father and continued to cultivate thereafter.

The 2nd Respondent concluded that Midelladola Aswedduma belonged to Rajamaha Viharaya, Kolawenigama based on a document marked එ1.1. She further concluded that Uraneris was a tenant cultivator of Rajamaha Viharaya, Kolawenigama based on එ1.2 which showed that one Uraneris had signed as tenant cultivator for land called "Madakalla" belonging to the Rajamaha Viharaya, Kolawenigama. The 2nd Respondent further held that the Respondent had failed to adduce any evidence of ownership to the disputed paddy land.

The learned High Court Judge concluded that the 2nd Respondent had exceeded her authority by inquiring into the ownership of the disputed land when the question before her was whether there was an owner-tenant cultivator relationship between the Appellant and the Respondent. He further held that the 2nd Respondent has taken into consideration irrelevant facts in coming to the conclusion that the Respondent was the tenant cultivator of Midelladola Aswedduma belonged to Rajamaha Viharaya, Kolawenigama.

In *Suneetha Rohini Dolawatha vs. Budhadhasa Gamage and another* [S.C. Appeal No. 45/83; S.C.M. 27.09.1985] (Reported as an annexure to *Herath v. Peter* (1989) 2 Sri.L.R. 325) Ranasinghe J. (as he was then) held:

> "Any dispute in respect of a paddy-field arising between a landlord and a tenant, as defined by the provisions of the said Act (Agrarian Services Act No. 58 of 1979), and in relation to which express provision is made therein will be regulated by the provisions so contained in the said Act; and any such dispute would have to be determined in the manner set out in the said Act. Such dispute cannot be brought before and sought to be determined by a court of law.

This principle will apply only if the dispute, which arises in respect of a paddy-field, is a dispute between a person, who is a landlord within the meaning of the said law, and a person, who is a tenant-cultivator within the meaning of the self-same Act. The two parties to the dispute should each bear the character which the Act requires that each should in fact and in law bear and possess, in order to enable one to enforce the rights the Act gives him against the other, and to subject the other to perform the obligations which the Act compels him to perform. If one or the other does not in fact and in law possess the character each is so required to have and possess, then the provisions of this law cannot be availed of by one and be imposed against the other."

Therefore, the jurisdiction of the 2nd Respondent depended on the Appellant establishing that Midelladola Aswedduma belonged to Rajamaha Viharaya and the Respondent was the tenant cultivator. However, as the learned High Court Judge,pointed out, the question of ownership is not a matter that can be decided by the 2nd Respondent.

In any event, the 2nd Respondent took the view that Midelladola Aswedduma belonged to Rajamaha Viharaya, Kolawenigama based on document marked එ7.1 which is titled "Final report on the village of Pahalakolawinna by the Land Settlement Department". It does not have the same effect as a "Settlement Order" made under section 5(5) of the Land Settlement Ordinance. Hence the 2nd Respondent fell into error in concluding that Midelladola Aswedduma belonged to Rajamaha Viharaya, Kolawenigama.

The 2nd Respondent relied on document marked එ7.2 to conclude that Uraneris was the tenant cultivator of Midelladola Aswedduma. This is document at the most shows that one Uraneris had signed as tenant cultivator of the land called "Madakalla" belonging to the Rajamaha Viharaya, Kolawenigama. However, the land in dispute was called Midelladola Aswedduma. The 2nd Respondent took into consideration irrelevant facts in concluding that the Respondent was a tenant cultivator of the Rajamaha Viharaya, Kolawenigama in relation to Midelladola Aswedduma.

The Respondent led the evidence of a clerk of the Land Settlement Department to establish that the land in dispute did not belong to Rajamaha Viharaya, Kolawenigama. The 2nd Respondent disregarded this evidence on the basis that he was only a clerk at the said department. The Respondent also marked as ඊ.1 an extract from the Register of Agricultural Lands for 1992 which showed that the Respondent was the owner cultivator of Rajamaha Viharaya, Kolawenigama. Section 45(3) of the Act states that any entry in the said register shall be admissible in evidence and shall be prima facie evidence of the facts stated therein.

In *Suneetha Rohini Dolawatha vs. Budhadhasa Gamage and another* (supra) Ranasinghe J. (as he was then) explained the evidentiary value of an entry in the agriculture register as follows:

> "The effect of an entry being declared to be "prima facie evidence" of the facts set out therein is that it is "evidence which appears to be sufficient to establish the fact unless rebutted or overcome by other evidence", and "is, not conclusive" - *Sarker, Evidence, 10 ed. p. 27:* "it is evidence which if not balanced or outweighed by other evidence will suffice to establish a particular contention" - *Halsbury 4th edt, Vol. 17, p* 22, *Sec.* 28. A similar view was expressed by Drieberg, J., in the case of *Velupillai vs. Sidembram 31 NLR 99:*
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> "Prima facie proof" in effect means nothing more than sufficient - proof - proof which should be accepted if there is nothing established to the contrary; but it must be what the law recognises as proof, that is to say, it must be something which a prudent man in the circumstances of the particular case ought to act upon - S.3, Evidence Ordinance".
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> Having quoted with approval the citations referred to above, Samarakoon C.J., in *Undugoda Jinawansa Thero vs. Yatawara Piyaratne Them. S.C. Appln. 46181, S.C.M.* 5.4.82 stated, in regard to the evidentiary value of an item of evidence which is considered "prima facie evidence", thus:
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> "It is only a starting point and by no means an end to the matter. Its evidentiary value can be lost by contrary evidence in rebuttal...If after contrary evidence has been led the scales are evenly balanced or tilted in favour of the opposing evidence that which initially stood as prima facie evidence is rebutted and is no longer of any value Evidence in rebuttal may be either oral or documentary or both....The Register is not the only evidence"."

The Appellant failed to rebut the evidentiary value created by the extract from the agriculture register. The 2nd Respondent fell into error by failing to consider material evidence and considering irrelevant material.

Jurisdictional facts are matters which must exist as a condition precedent, so to say before a tribunal can properly take jurisdiction or cognizance of the particular matter or case. Non-jurisdictional facts are those which do not affect the power of a tribunal to adjudicate concerning the subject matter in a given case.

In *R v. Fulham, Hammersmith and Kensington Rent Tribunal* [(1951) 2 K. B. 1 at 6] Lord Goddard C.J. held:

> " If a certain state of facts has to exist before an inferior tribunal has jurisdiction, they can inquire into the facts in order to decide whether or not they have jurisdiction but cannot give themselves jurisdiction by a wrong decision upon them; and this Court may, by means of proceedings for certiorari, inquire into the correctness of the decision. "

For the reasons set out earlier, the 2nd Respondent has made a jurisdictional error of fact. Accordingly, I am in agreement with the findings of the learned High Court Judge that the 2nd Respondent exceeded her powers in concluding that Midelladola Aswedduma belonged to Rajamaha Viharaya, Kolawenigama and that the Respondent was the tenant cultivator.

For the foregoing reasons, I see no reason to interfere with the judgement of the learned High Court Judge of Matara dated 17.11.2003.

The appeal is dismissed with costs.

Judge of the Court of Appeal

K.K. Wickremasinghe J.

I agree.

Judge of the Court of Appeal