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

A.M. Ranbanda,
No.215,
Uda Peradeniya,
Peradeniya.
1st Party Respondent-Respondent-Appellant

CA CASE NO: CA (PHC) 109/2012
HC CENTRAL PROVINCE CASE NO: Revision 59/10
MC DAMBULLA CASE NO: 26062

Vs.

Anula Abeykoon,
Athupara Yaya,
Dambulla.
2nd Party Petitioner-Respondent
Officer in Charge,
Police Station,
Dambulla.
Complainant-Respondent

Before: K.K. Wickramasinghe, J.
Mahinda Samayawardhena, J.

Counsel: Sudarshani Cooray for the 1st Party Respondent Appellant.
Isuru Somadasa for the 2nd Party Petitioner Respondent.

Argued on: 01.04.2019

Decided on: 03.06.2019

Mahinda Samayawardhena, J.

This is an application filed by the police under section 66 of the Primary Courts' Procedure Act, No. 44 of 1979, over a dispute between the 1st party appellant and the 2nd party respondent regarding possession/cultivation of a paddy filed. The Magistrate's Court held with the appellant on the basis that it was the appellant who was in possession of the paddy field when the first information was filed in Court and the respondent has not proved forcible dispossession within two months prior to the filing of the first information.

This order was set aside by the High Court in revision, which, relying on *Mansoor v. OIC Avissawella [1991] 2 Sri LR 75*, took the view that as the dispute relates to the tenancy rights of a paddy field, the Magistrate's Court has no jurisdiction to make a determination, and only the Tribunal set up by the Commissioner General of Agrarian Services in terms of the Agrarian Development Act, No. 46 of 2000, as amended, has that jurisdiction. This appeal is from the said Judgment of the High Court.

Mansoor v. OIC Avissawella [1991] 2 Sri LR 75 is based on the well-established general principle that:

> *Where a statute creates a right and, in plain language, gives a specific remedy or appoints a specific tribunal for its enforcement, a party seeking to enforce the right must resort to that tribunal and not to others*.

The Agrarian Development Act is a special Act passed *inter alia* to particularly resolve the disputes between landlords and tenant cultivators of paddylands. Hence the jurisdiction of the ordinary courts to entertain and determine such disputes are ousted. Section 98 of the Agrarian Development Act enacts:

> *The provisions of this Act shall have effect notwithstanding anything to the contrary in any other written law, and accordingly, in the event of any conflict or inconsistency between the provisions of this Act and such other law, the provisions of this Act shall prevail.*

The learned counsel for the appellant does not dispute the said legal position. But her contention is that the Magistrate's Court lacks jurisdiction in such disputes only if both parties agree that there is a landlord and tenant cultivator relationship between them. As the appellant in this case does not accept the respondent as a tenant cultivator under him, the counsel argues that the Magistrate's Court has jurisdiction to decide the matter on possession, and therefore the Judgment of the High Court is erroneous. Counsel cites *Hearth v. Peter [1989] 2 Sri LR 325* in support where it was authoritatively held that:

> *Any dispute in respect of a paddy field arising between a landlord and a tenant would have to be determined in the manner provided for in the Agrarian Services Act, and cannot be brought before a Court of Law. However, the above principle will apply, only where each party admits the status claimed by the other, i.e. of landlord and tenant. The jurisdiction of the Court is not ousted where the status is denied.*

I am in agreement with that submission.

The learned counsel for the respondent does not say that the respondent is the tenant cultivator of this paddy land under the appellant. Counsel says that the respondent was the tenant cultivator of her brother, who was not a party to the case. The respondent in her statement made to the police dated 03.11.2009[1] has clearly stated that she was the tenant cultivator under Seneviratne Abeykoon (who is a relation of her) until she was forcibly evicted from the paddy land by the appellant in the last season. The respondent has also particularly stated in the same statement that, in the last season, it was the appellant who cultivated the paddyland.[2]

Then it is clear that:

a) there is admittedly no landlord and tenant cultivator relationship between the appellant and the respondent, and;

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[1] Vide pages 185-186 of the brief.
[2] Vide 12th line from the bottom of page 186 of the brief.

b) the respondent was forcibly evicted by the appellant from the paddy land in the last season, which was definitely more than two months before the filing of the first information in Court.

The respondent cannot be granted relief under section 68(3) of the Act as the ouster has taken place more than two months before the filing of the first information. The appellant is therefore entitled to remain in possession under section 68(1) as the one who was in possession on the date on which the fist information was filed in Court.

One party in a section 66 application can claim to be a tenant cultivator. It is a mistake to think that the moment such a claim is made, the jurisdiction of the Magistrate's Court is instantly ousted. The jurisdiction of the Magistrate's Court is ousted, if, and only if, the two contesting parties in the first place accept a relationship of landlord and tenant cultivator between them. If one party denies it, the Court has the jurisdiction to determine the matter. If the party claims to be a tenant cultivator says that he is the tenant cultivator of someone else who is not a party to the case, as in this case, the Court definitely has jurisdiction to determine the matter between the two parties before Court.

I must also add that when the Court decides that it has no jurisdiction due to the relationship of landlord and tenant cultivator being accepted, still, the Court has inherent jurisdiction/power to order to maintain *status quo* until the

parities seek relief under the provisions of the Agrarian Development Act.

The Judgment of the High Court dated 27.06.2012 is set aside, and the Order of the Magistrate's Court dated 28.06.2010 is affirmed.

Let the parties bear their own costs.

Appeal allowed.

Judge of the Court of Appeal

K.K. Wickremasinghe, J.
I agree.

Judge of the Court of Appeal