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Amarasinghe for the Appellant.
Nimal Muthukumarana for the Respondent.

Decided on: 18.07.2019

Mahinda Samayawardhena, J.

The Petitioners filed this application in the Magistrate's Court on 30.06.2008 against the Respondent under section 66(1)(b) of the Primary Courts' Procedure Act, No. 44 of 1979, seeking restoration of possession of the land in suit in terms of section 68(3) of the Act on the basis that they were forcibly dispossessed from the land by the Respondent within two months prior to the filing of the application. The Respondent in his counter affidavit resisted the application of the Petitioners on the basis that the dispossession took place outside the period of two months. After inquiry, the learned Magistrate by order dated 10.02.2009 held with the Petitioners. Being aggrieved by that order, the Respondent went before the High Court and the High Court by Judgment dated 23.03.2010 set aside the order of the Magistrate's Court. This appeal by the Petitioners is against the Judgment of the High Court.

The High Court basically set aside the Magistrate's Court order on the basis that the disputed land is a paddy land and also a state land, and therefore the Magistrate's Court has no jurisdiction to inquire into this dispute under section 66 of the Primary Courts' Procedure Act. The High Court has taken up

the position that the dispute shall be dealt with under the provisions of the Agrarian Development Act, No. 46 of 2000. I have no hesitation to state that the learned High Court Judge has manifestly misdirected himself in law on jurisdiction.

It is erroneous to conclude that invocation of section 66 of the Primary Courts' Procedure Act can only be done provided the dispute relates to a private land as opposed to a state land. If the dispute is a land dispute as defined in section 75 of the Act, as a result of which there is an imminent threat to the breach of the peace, irrespective of whether the land is a state land or a private land, the Court is clothed with jurisdiction to make a provisional order in accordance with law with the sole objective of preventing the breach of the peace until the substantive rights of the parties are decided by the District Court.

The finding of the learned High Court Judge that, as the dispute relates to a paddy land, the dispute shall be resolved under the mechanism provided in the Agrarian Development Act, No. 46 of 2000, as amended, and not under section 66 of the Primary Courts' Procedure Act, is also bad in law.

Mansoor v. OIC Avissawella [1991] 2 Sri LR 75, which the learned High Court Judge heavily relied on 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, as the long title of the Act suggests, predominantly, to "provide for

matters relating to landlords and tenant cultivators of paddy lands". Hence the jurisdiction of the ordinary courts to entertain and determine such disputes is 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.

However, Agrarian Development Act does not oust the jurisdiction of the Magistrates' Courts exercisable under section 66 of the Primary Courts Procedure Act, merely because the dispute relates to a paddy land. For the former Act to be applicable, and the jurisdiction of the Magistrate's Court is to be ousted, there shall be a landlord and tenant cultivator relationship between the two contending parties.

Further, 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. (*Hearth v. Peter* [1989] 2 Sri LR 325)

I might also add that merely because one party to the section 66 application is a tenant cultivator, the Court does not lack

jurisdiction, if the disputing party is not his landlord but an outsider.

For completeness let me also state that in case 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 to make a suitable order to maintain *status quo* until the parties seek relief under the provisions of the Agrarian Development Act.

Learned counsel for the Respondent in his short written submission states that the Petitioners instituted the action after two months of the alleged dispossession. This appears to be correct. The Petitioners filed the case in the Magistrate's Court on 30.06.2008. According to the first complaint made to the police by the first Petitioner on 28.04.2008 (found at page 78 of the Brief), the Petitioners have been forcibly dispossessed from the land by the Respondent on that day, i.e. 28.04.2008. In that complaint the first Petitioner has stated that the Respondent together with about 20 people was ploughing the paddy field which she had been cultivating since 1992. This complaint has completely escaped the attention of the learned Magistrate. As seen from the complaint of the first Petitioner made to the police on 07.05.2008 (found at page 60 of the Brief), the Respondent has continued ploughing on 07.05.2008 as well. Thereafter, as seen from the next complaint of the first Petitioner made to the police on 21.05.2008 (found at page 70 of the Brief), the Respondent has sowed paddy in the paddy land on 20.05.2008. It is very unfortunate that the police did not report the matter to the Magistrate's Court under section 66 of the Primary Courts'

Procedure Act soon after the first complaint was made or at any time thereafter. The Petitioners have filed the action under section 66(1)(b) as a private plaint two months after the said dispossession. Hence no relief under section 68(3) can be granted in favour of the Petitioners.

Although I do not agree with the reasoning of the High Court Judge, I am compelled to agree with the conclusion.

Appeal is dismissed without costs.

Judge of the Court of Appeal

K.K. Wickremasinghe, J.

I agree.

Judge of the Court of Appeal