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

Court of Appeal Case No:
CA (PHC) APN 116/2019

Provincial High Court of North Western Province Case No:
HCA/11/2018

Board of Review No:
AGBR/2017/17/09

BEFORE THE AGRARIAN TRIBUNAL

D.M. Indrawathie of Pokunuwatte,
Veypathanga,
Padeniya.

Applicant

Vs.

Nihal Senaka Kodituwakku
Of No. 32-F-20,
Rukmalgama,
Pannipitiya.

Respondent

THEN IN APPEAL BEFORE THE BOARD OF REVIEW

D.M. Indrawathie of Pokunuwatte,
Veypathanga,
Padeniya.

Applicant-Appellant

Vs.

Nihal Senaka Kodituwakku
Of No. 32-F-20,
Rukmalgama,
Pannipitiya.

Respondent-Respondent

AND IN APPEAL IN THE HIGH COURT

D.M. Indrawathie of Pokunuwatte,
Veypathanga,
Padeniya.

Applicant-Appellant-Appellant

Vs.

Nihal Senaka Kodituwakku
Of No. 32-F-20,
Rukmalgama,
Pannipitiya.

Respondent-Respondent-Respondent

AND NOW BETWEEN
IN THE COURT OF APPEAL

In the matter of an application for revision under Article 138 of the Constitution read with Section 11 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 against Judgment delivered in HCA 11/2018 in the Provincial High Court of the North Western Province (holden in Kurunegala) dated 09.08.2019.

D.M. Indrawathie of Pokunuwatte,
Veypathanga,
Padeniya.

Applicant-Appellant-Appellant-Petitioner

Vs.

1. Nihal Senaka Kodituwakku
   Of No. 32-F-20,
   Rukmalgama,
   Pannipitiya.

   Respondent-Respondent-Respondent-Respondent

2. Herath Mudiyanselage Shantha Deshapriya
   Of No. 58, Magulagama, Muwanwella,
   Padeniya.

   Respondent

Before: **Prasantha De Silva, J.**

K.K.A.V. Swarnadhipathi, J.

Counsel:	Dr. Sunil Cooray with Sudarshani Cooray for the Applicant-Appellant-Appellant-Petitioner. Geoffrey Alagaratnam P.C with T. Cader for the Respondent-Respondent-Respondent-Respondent.
Written Submissions tendered on:	04.04.2022 by the Applicant-Appellant-Appellant-Petitioner. 04.05.2022 by the Respondent-Respondent-Respondent-Respondent
Argued on:	22.03.2022
Decided on:	16.06.2022

Prasantha De Silva, J.

Order

It appears that D.M. Tikiri Banda was the ande-cultivator from year 1954, of the paddy land called "Pahalawela Kumbura", alias Mr. Kodituwakku's paddy land. The landlord of the said paddy land is the Respondent in this matter, namely Nihal Senaka Kodituwakku. The said D.M. Tikiri Banda had passed away in year 1983 and subsequently, his wife Herath Mudiyanselage Bandara Menike had become the ande cultivator of the disputed paddy field.

D.M. Indrawathi, the Applicant-Appellant-Appellant-Petitioner of the application [hereinafter referred to as the Petitioner] had submitted that, when her mother, the said Bandara Menike worked as the ande cultivator of the disputed paddy land, her two brothers D.M. Ranasinghe and D.M. Wanigasekere also worked at the said paddy field assisting their mother. After her said two brothers were married off, Petitioner and her husband namely P.M.W. Premasiri Anurabanda worked at the disputed paddy land as assistants of her mother.

It was further submitted by the Petitioner that her mother passed away on or around 15.02.2008 and thereafter, the Respondent-Respondent-Respondent-Respondent in this application [hereinafter referred to as the Respondent] had disputed the ande rights of the Petitioner.

It was brought to the notice of Court that the 2nd Respondent namely, Herath Mudiyanselage Shantha Deshapriya was the Respondent's watcher in respect of the high land adjoining the subject paddy land, and that he received the landlord's share in each season [Respondents] from the paddy land until the demise of the Petitioner's mother in 2008.

It is evident that the Petitioner had made a complaint to the Commissioner of Agrarian Development of Kurunegala by complaint dated 30.09.2008, stating her ande rights were disputed by the Petitioner. Subsequently, Assistant Commissioner of Agrarian Development-Kurunegala had referred the matter to the Agrarian Tribunal under Section 7 (3) of the Agrarian Development Act No. 46 of 2000.

The Agrarian Tribunal had been informed by the 1st Respondent that he is unable to be present at the inquiry since the subject paddy land has already been transferred to Shantha Deshapriya, the 2nd Respondent by Deed marked as X1. Since 1st and the 2nd Respondents were not present before the Agrarian Tribunal even after issuing notices on them, the inquiry proceeded without the participation of the 1st and 2nd Respondents.

However, after the conclusion of the inquiry, the Agrarian Tribunal of Mahawa had delivered the Order on 24.01.2017 accepting that D.M. Tikiri Banda and thereafter, his wife Bandara Menike had been working as ande cultivators of the subject paddy land, since the Law which was prevailing at the time of Bandara Menika's death in year 2008 was Agrarian Development Act No. 46 of 2000.

As per the said Act, there were no provisions made regarding the succession of ande rights devolving on the heirs of the deceased ande cultivator. Thus, ande rights of the said Bandara Menike cannot devolve on the Petitioner.

Being aggrieved by the Order of the Agrarian Tribunal, the Petitioner preferred an appeal to the Board of Review. After both parties made submissions before the Board of Review on 24.04.2018, the Board of Review had pronounced their decision, affirming the decision of the Agrarian Tribunal of Mahawa on the basis that although the Petitioner's mother succeeded to the ande rights of the Petitioner's father, the Petitioner could not succeed to the ande rights of her mother as Agrarian Development Act No. 46 of 2000 does not give provisions for succession of ande rights.

Being aggrieved by the said decision of the Board of Review, the Petitioner had filed an appeal to the High Court of North Western Province. The learned High Court Judge too had upheld the same circumstances and dismissed the appeal of the Petitioner on the basis that neither Petitioner's mother nor the Petitioner are ande cultivators of the disputed land thus cannot qualify under Act No. 46 of 2011 as Petitioner's mother had passed away in year 2008.

It is seen that the learned High Court Judge held, neither the mother of the Petitioner nor the Petitioner were ande cultivators, since their names do not appear in the Register which maintained the names of the ande cultivators.

However, the Agrarian Tribunal of Mahawa on the evidence placed before the Tribunal had accepted that the Petitioner's father had been the ande cultivator of the subject paddy land and later, his wife, mother of the Petitioner, the said Bandara Manike, who was also accepted as the ande cultivator of the said paddy land. Thus, the Petitioner argues that her mother's ande rights devolved on her after the demise of her mother on 15.02.2008.

It was revealed in evidence that after the death of the Petitioner's mother, the Petitioner and her husband began quarrelling with the Petitioner's sister-in-law in relation to the ande rights to cultivate the subject land, resulting in a stalemate.

In these circumstances, the 1st Respondent, without getting involved in the Petitioner's family dispute took over the cultivation of the disputed paddy land by himself.

The Petitioner had made a complaint to the Commissioner of Agrarian Development-Kurunegala by complaint dated 30.09.2008. It is seen that although the inquiry commenced before the Commissioner of Agrarian Development, the matter was referred to the Agrarian Tribunal at Mahawa and inquiry proceeded without the participation of the Respondents.

At the inquiry, on behalf of the Petitioner, receipts marked as පැ1 to පැ8 were submitted, to reflect the acceptance of harvest by the 2nd Respondent. It is to be noted that the paddy land register, marked as පැ9 and produced in evidence, reveals neither the Petitioner's father's name nor her mother's name as ande cultivators. Instead the 1st Respondent's name is indicated as the owner cultivator.

As such, the findings of the Agrarian Tribunal is arguable.

Be that as it may, the question of law and the crux of this matter is pertaining to the succession of ande rights to the Petitioner. Since the Petitioner's mother passed away on 15.02.2008, it is to be observed that the prevailing law in this regard was Agrarian Development Act No. 46 of 2000. It is noteworthy that the said Act does not provide provisions to the effect that the ande rights can devolve on the heirs of the ande cultivator. Accordingly, when assuming the said Bandara Menike as the ande cultivator, her rights would not devolve on the Petitioner.

However the Petitioner relied upon the Agrarian Development Act (Amendment) Act No. 46 of 2011, where Section 1D deals with the devolution of rights of tenant cultivators.

Section 1D stipulates that;

(1) The rights of a tenant cultivator under the principal enactment in respect of an extent of paddy land shall in the event of the death or permanent disability of such tenant cultivator, devolve on the surviving spouse of such tenant cultivator and failing such spouse, on only one of the children of such tenant cultivator:
Provided that in the latter instance, if there is more than one child, the child whose sole means of living is cultivation, shall be preferred to the others:
Provided further, if there is more than one child, whose sole means of living is cultivation, the oldest from amongst such children shall be preferred to the others. Where the lessee of an extent of paddy land shall not be deemed to be a tenant cultivator. Devolution of rights of tenant cultivators.

(2) The rights of a tenant cultivator of an extent of paddy land which is cultivated, either jointly or in rotation with any other tenant cultivator, who dies or becomes permanently disabled, shall in relation to such extent, be devolved in accordance with the provisions of this section.

In this respect, it was submitted on behalf of the Respondents that the said amending Act No. 46 of 2011, although granted rights of succession, does not cover the alleged eviction said to have occurred prior to 2011, as the Petitioner claimed rights in year 2008.

It is observed that the Mahawa Agrarian Tribunal and the Board of Review both held that there was no right for the Petitioner to make the application since the amending Act No. 46 of 2011 does not operate retrospectively, which was also upheld by the High Court.

It was the contention of the Respondents, that it is a fundamental principle of statutory interpretation that laws cannot operate retrospectively unless expressly stated to be so or by necessary implication and that Act No. 46 of 2011 cannot cover the alleged eviction which happened prior to its enactment.

Therefore, the rights or liabilities that occurred before 2011 are not covered in Act No. 46 of 2011 as the 2011 amendment does not cover pending matters or does not catch-up proceedings that occurred before.

The case of ***Handuwala Devage Sisira Munashinghe Vs. Chairman and Members of Debt Conciliation Board and others, SC appeal No. 134/2014*** [S.C.M 14.07.2020] by *Justice E.A.G.R. Amarasekere* was cited. This case cited the following principles extracted from "Maxwell on the Interpretation of Statutes" (12th Edition) at pages 215 and 216, relating to retrospective application of statutes;

> *"Upon the presumption that the legislature does not intend what is unjust rests the leaning against giving certain statutes a retrospective operation. They are construed as operating only in cases or on facts which come into existence after the statutes were passed unless a retrospective effect is clearly intended. It is a fundamental rule of English law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act or arises by necessary and distinct implication.*
>
> *The statement of the law contained in the preceding paragraph has been "so frequently quoted with approval that it now itself enjoys almost judicial authority."*

One of the most well-known statements of the rule regarding retrospectivity is contained in this passage from the Judgment of *R.S. Wright J.* in ***Re Athlumney***;

> *"Perhaps no rule of construction is more firmly established than this-that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation,*

otherwise than as regards matter of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only."

The rule has, in fact, two aspects, for it *"involves another and subordinate rule, to the effect that a statute is not to be construed so as to have a greater retrospective operation than its language renders necessary."*

Further, *Justice Amarasekara* relied on the following authorities:

Attorney General Vs. Vernazza [1960] 3 All E. R. 97 at 100, *Lord Denning* stated as follows; "*If the new Act affects the Respondent's substantive rights, it will not be held to apply to proceedings which have already commenced, unless a clear intention to that effect is manifested: see* ***Colonial Sugar Refining Co. Vs. Irving [1905] A.C. 369****. But if the new Act affects matters of procedures only, then, prima facie, it applies to all actions pending as well as future;".* The aforementioned statement has also been referred to in ***Kanagasabai Vs. Seevaratnam 76 NLR 517 at 520*** [at page 20].

In view of the aforesaid authorities, it is apparent that it only permits purely procedural laws to be retrospective.

As the amended act No. 46 of 2011 does not give any retrospective effect, it is imperative to note that the law applicable in this circumstance is Agrarian Services Act No. 40 of 2000, since the mother of the Petitioner passed away in 2008. This Act does not provide provisions for succession of ande cultivator. Thus, upon the demise of an ande cultivator, no party will inherit such right to be an ande cultivator. As such, with the demise of the mother of the Petitioner, her status as a tenant cultivator also seizes. Thus, the Petitioner is not entitled to step into the shoes of her mother.

In this respect, it is worthy to note that after the demise of the Petitioner's mother, Respondents had taken the control of the disputed paddy land and started cultivating the same. Moreover, at the time the amending Act No. 46 of 2011 was enacted, the Petitioner was not in possession of the disputed paddy land and instead the Respondent had been in possession of the same.

It is imperative to note that, pursuant to the application made by the Petitioner to the Assistant Commissioner of Agrarian Services-Mahawa, it was decided by both the Agricultural Tribunal of Mahawa on 24.03.2017 and the Agricultural Board of Review by Order dated 24.04.2018, concluding that the Petitioner is not the lawful ande cultivator of the impugned paddy land in dispute.

Therefore, it is seen that Agricultural Tribunal-Mahawa, Agricultural Board of Review and the High Court of the North Western Province have all correctly determined that the Petitioner does not hold the right to be the ande cultivator in respect of the disputed paddy land.

In view of the aforesaid reasons, we see no reason for us to interfere with the findings of the learned High Court Judge of Kurunegala. Thus, the application of the Applicant-Appellant-Appellant-Petitioner is dismissed without cost.

JUDGE OF THE COURT OF APPEAL

K.K.A.V. Swarnadhipathi, J.
I agree.

JUDGE OF THE COURT OF APPEAL