

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

Basnayake Wanniarachchilage Charlies

Respondent-Petitioner-Appellant

Vs

CA (PHC) 22/99
HC Hambanthota HCA88/97

Margret Punya Warnakulasuriya

Respondent-Respondent

Before : Sisira de Abrew J &
Anil Gooneratne J

Counsel : W. Dayarathne PC with Samantha Bandara
for the appellant.
Respondent is absent and unrepresented.

Argued on : 13.12.2010

Decided on : 11.2.2011

Sisira de Abrew J.

On a complaint made by Gunathunga Warnakulasuriya, the owner of the land in question, that his due share not being paid by the ande cultivator, the Assistant Commissioner of Agrarian Services (hereinafter referred to as the Assistant Commissioner) held an inquiry. After the inquiry the Assistant Commissioner by his notice dated 19.12.90, directed the appellant to pay due share to the said Gunathunga Warnakulasuriya. The assistant Commissioner, by his order dated 20.5.93, informed the appellant that his ande rights had come to an end as he had failed to comply with

previous direction issued on 19.12.90 and further directed that the vacant possession of the land be handed over to said Gunathunga Warnakulasuriya within 30 days from the date of the letter. The appellant did not comply with the said direction. The Assistant Commissioner upon the death of Gunathunga Warnakulasuriya substituted his wife in the room of said Warnakulasuriya. As the appellant did not hand over the possession of the land, the learned Magistrate upon an application made by the Assistant Commissioner made an order evicting the appellant.

On 8.12.1997, the appellant filed a petition in the High Court moving for (a) writ of certiorari to quash the direction issued by the Assistant Commissioner on 20.5.93 (b) writ of certiorari to quash the substitution effected by the Assistant Commissioner on 27.9.96 and (c) writ of mandamus compelling the Assistant Commissioner to withdraw the case filed in the Magistrates' Court.

Learned PC for the appellant contended that substitution of the wife of Gunathunga Warnakulasuriya is wrong as there is no such provision in the Act. I now advert to this contention. The best person to be substituted in the room of the husband is his wife. There can't be any objection to this substitution. I am therefore unable to agree with this submission. The appellant did not hand over the vacant possession of the land within 30 days from the direction dated 20.5.93. Thus the ande rights of the appellant have come to an end on 20.6.93. Therefore the appellant has no right to take any objection to the said substitution. The learned High Court Judge in his order observed these matters.

The appellant having participated at the inquiry before the Assistant Commissioner, intentionally withdrew from the inquiry which was being conducted in accordance with the procedure established by law. Writ of mandamus and certiorari being discretionary remedies will not be available to a person who displays such a conduct.

For the above reasons, I hold that the learned High Court Judge was right when he dismissed the appellant's petition. In the circumstances I dismiss the appeal as there is no merit in it.

Appeal dismissed.

Judge of the Court of Appeal

Anil Gooneratne J

I agree.

Judge of the Court of Appeal