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

C.A. No. 564/98(F)

D.C.Kuliyapitiya No.7102/L

M.A.Herath Banda,

Nakalagamuwa, Narammala

And seven others

Plaintiffs

1. A. V.Abeysekera
   G.A's Office, Alawwa
2. D.A. Weerakkody
   Janapada Niladhari Office,
   Kubuloluwa, Veyangoda
3. D.M. Jayatilaka
   Grama Sevaka Office,
   Attambeypola Division,
   Narammala

Defendants

AND NOW BETWEEN

A. Wimal Abeysekera
G.A.Office, Alawwa
And two others
Defendant-Appellants

Vs

M. A. Herath Banda

And seven others

Plaintiff-Respondents

BEFORE : Deepali Wijesundera J., and

M. M. A. Gaffoor J.,

COUNSEL : Vikum de Abrew, D.S.G for the Appellant

P.K.Prince Perera for the Substituted-Plaintiff-Respondent

ARGUED ON 23.01.2015

DECIDED ON 12.03.2015

M.M.A.Gaffoor J

The Plaintiffs Respondents (hereinafter sometimes called and referred to as the "Plaintiffs") instituted the above styled action by their original plaint dated 17.08.1993. This plaint was amended later by the amended plaint dated 27.03.1995 stating :

That they were the lawful tenant cultivators of the paddy land called Pitawela alias Dickwala kumbura at Muthugala Estate, that the said land was cultivated by the Plaintiffs as mentioned in paragraph 3 of the amended plaint, that the Plaintiff had paid the paraveni as the tenant cultivators, to the owners, as well as to the Government, Multi Purpose Society and to the Land Reform Commission since 1965. They have also stated that they had paid the rates in terms of Agrarian Services Act, and their rights as tenant cultivators did continue even after the said

paddy land in question was taken over by the Land Reform Commission, and that in addition their rights were protected by virtue of a gazette notification No. 181/2 dated 23.02.1982.

The Plaintiffs have prayed that they be declared the tenant cultivators of the land described in the schedule thereto and for an order that the Defendants cannot evict them from the said land.

The pith and substance of the Defendant Appellants' case is that :

The land in issue which is morefully described in the schedule to the plaint is vested in the Land Reform Commission in terms of the provisions of Act No.1 of 1972, that the said land is vested in the State with effect from 02.02.1982, and that the District Court did not have the jurisdiction to determine the rights of the Plaintiffs who are purported to be the tenant cultivators of the land in issue.

At the end of the trial the learned District Judge delivered her judgment on 03.02.1998 entering judgment and a decree in favour of the Plaintiffs Respondents as prayed for in the prayer to the plaint.

Being aggrieved by the above judgment the Defendants Appellants had appealed to this Court and stated facts albeit in brief as follows :

The learned District Judge in evaluating the facts emerged in the course of the trial has observed thus:

That the Plaintiffs' claim for reliefs is in terms of Section 5(2) of the Agrarian Services Act No. 58 of 1979, and morefully for the removal of all the obstacles

and obstructions caused by the Defendants and enable the Plaintiffs to cultivate the land in issue.

It was also stated that the Plaintiffs were even accepted as tenant cultivators by the Land Reform Commission, District Office of Agrarian Services at Narammala and the Secretary to the Multi Purpose Cooperative Society of Narammala.

The gravamen of the Defendants argument was that the land in question is a State land which was acquired by virtue of the gazette extra-ordinary dated 23.02.1982, and the said gazette supersedes any other law and no cause of action has arisen against the Defendants and in addition the District Court has no jurisdiction to determine a matter of this nature.

It is also pertinent to note that at the time the land in issue was acquired by the Land Reform Commission in 1972, one Gunasekera's name had been registered as the tenant cultivator and not the names of the Plaintiff-Respondents.

It was the contention of the Defendant Appellants that the Plaintiffs had forcibly entered the paddy field and cultivated the same. But the Plaintiffs state that they had never entered into any agreement with the Land Reform Commission, and had been working as tenant cultivators under the said Gunasekera and the said land had been conveyed to the Multipurpose Cooperative Society Limited, Dambadeniya. Thereafter the said society had allowed the Plaintiffs to cultivate the same.

The Defendants' position was that the Plaintiffs' names have not been registered as the tenant cultivators in the relevant register. The learned District Judge in her impugned judgment had rejected this contention but arrived at the conclusion

that the Plaintiffs had cultivated the land in issue, as evidenced by the exhibits marked P4 – P87 and the learned District Judge was satisfied that it was the Plaintiffs who had cultivated the paddy land at the time the said land was acquired by the Land Reform Commission.

The learned District Judge was also of the view that although the said land has been acquired by the Land Reform Commission, the rights of the tenant cultivators has not been affected, as contended by the Defendants, and entered judgment in favour of the Plaintiffs.

That the said judgment is contrary to the provisions of Agrarian Services Act No. 58 of 1979, and the District Judge did not have jurisdiction to hear and determine the matter in issue.

The facts surfaced through the arguments of the Respondents-Appellants are:

That the Plaintiff-Respondents instituted the above styled action against the Defendants for a declaration that the Plaintiffs are the tenant cultivators of the land in dispute and the Appellants have no right to evict the Respondent from the said land. It is the contention of the Appellants that the paddy land in issue was vested in the Land Reform Commission in terms of Act No.1 of 1972 and by the gazette notification No. 181/2 dated 23.02.1982, and in terms of Section 2 (1) of the Land Grant (Special Provisions) Act No. 43 of 1979 the land in issue has been vested with the State with effect from 2.2.1982. Therefore the District Court of Kuliyapitiya has no jurisdiction to hear this case.

The Respondent Appellants have asserted the fact that the rights of the Plaintiff Respondents had been terminated by the operation of the above law and after

the said land was vested in the State, they become the absolute owners of the said land.

The crux of the said appeal is whether the Plaintiff Respondents could maintain this action for a declaration as tenant cultivators in the District Court and whether their rights could be protected if the land is vested with the State. It is noted that in terms of Section 45(2) of No. 58 of 1979 for a farmer to acquire the status of a tenant cultivator his name should be registered in terms of the above section. It is contended by the Appellants that the names of the Respondents as the tenant cultivators do not appear in any register or any other written or oral agreement tendered to that effect, and this position was established by the document marked V10. Hence it is categorically stated by the Appellants that the Respondents had failed to prove sufficient evidence as to their status as tenant cultivators. Appellants had also adverted to Court to the fact that no order could be issued to restrict the Public Officer in terms of Section 24 of the Interpretation Ordinance.

It is asserted by the Respondents that their rights have not been terminated by the State even after the disputed land was acquired. It was also observed by the learned District Judge that, although that the land been vested with the State by virtue of the said gazette, the status of the Respondents as tenant cultivators is not terminated thereby.

It is common ground that the land in issue is a State land and if the Respondents are to be declared as tenant cultivators under the Agrarian Services Act No. 58 of 1979 (repealed and replaced by Agrarian Development Act No. 46 0f 2000) this court has to consider as to who the land owner is, It is contended by the

Appellants that the State cannot be a landlord of a land. It is also argued by the Appellants that the State is not bound by the Agrarian Services Act No. 58 of 1979.

It was also the position of the Appellants that in terms of the gazette notice No. 181/2 dated 23.02.1982 the land vested in the Land Reform Commission is vested in the State in terms of the provisions of Section 2(1) of the Lands Grants (Special Provisions) Act No. 43 of 1979. Further it should be noted that Section 2(3) states that the order made is final and conclusive and cannot be called in question in a court of law. Further it is also to be noted that Section 2(4)(a) empowers the Court with unfettered powers.

Section 2(4)(a) reads thus:

> *"The State shall, with effect from the date of such order, have absolute title to such agricultural or estate land free from all encumbrances (other than any servitude specified in such order."*

Accordingly, if a tenancy existed at the time of the order, it should have been mentioned in the Order. If not mentioned, the court need not consider the tenancy and therefore the Plaintiff's claim as tenant cultivators cannot be accepted.

However, the question raised before this court is whether the District Court has jurisdiction to grant the reliefs prayed for by the Plaintiff.

As the trial, the following issues had been raised as to jurisdiction :

i) Have the Plaintiffs cultivated and possessed the paddy land referred to in paragraph 1 and the schedule to the amended plaint as tenant cultivators since 1965;

ii) Have the Plaintiffs cultivated and possessed the said paddy land ias tenant cultivators;

iii) Are the Defendants threatening the Plaintiffs in respect of their rights as the tenant cultivators since (02.07.1982);

iv) Has the land referred to in the plaint vested in the State in terms of Land Grants (Special Provisions) Act No. 43 of 1979 and Gazette notification No. 181/2 dated 23.02.1982 (Issue No.6)

v) Has the said paddy land in dispute vested in the Land Reform Commission in terms of Act No. 1 of 1972;

vi) Does this Court have jurisdiction to hear and determine this action (Issue No.9);

vii) Is the land referred to in the plaint and the land referred to in the schedule to the plaint the same land (Issue No.10);

viii) Can the Plaintiff have and maintain this action on the matters referred to in paragraph 13 of the plaint (Issue No. 14);

And the learned District Judge has answered the issues in favour of the Plaintiff. This is an erroneous decision. This decision touches the competency of the court.

"Lack of competency in a court is a circumstance that results in a judgment or order that is void. Lack of competency may arise in one of two ways. A court may lack jurisdiction over the cause or matter or over the parties; it may also lack competence because of failure to comply with such

*procedural requirements as are necessary for the exercise of power of the court. Both are jurisdictional defects, the first mentioned of these is commonly known in law as a '**patent**' or "**total**" want of jurisdiction or a defectus jurisdiction and the second a "**latent**" or "**contingent**" want of jurisdiction or a defectus triationis. Both classes of jurisdictional defects result in judgments or orders which are void,"* Per Tennakoon C.J., in Perera vs Commissioner of National Housing – 77 NLR page 361 at page 366. In the instant case, the District Court lacks jurisdiction, which falls under the first category of 'patent' or 'total' want of jurisdiction.

It is well established principles of law that where a statute creates new rights and provides a specific remedy or appoints a specific Tribunal for its enforcement, a party seeking to enforce the right must resort to the prescribed remedy or prescribed Tribunal and no other .... Basnayake CJ., in Modera Patuwata Co-operative Fishing Society Ltd., vs Gunawardena – 62 NLR 188, 191-192.

Beginning with the Paddy Lands Act No. 1 of 1958, succeeding statutes have protected tenant cultivators of paddy lands against eviction or disturbance and to that end have empowered the Commissioner of Agrarian Services to hold an inquiry into the matter. The present law in this regard to the Agrarian Development Act No. 46 of 2000 which has made provisions for such an inquiry by the Agrarian Tribunal on a complaint made by a tenant cultivator to the Commissioner General of Agrarian Services. The question arises as to whether a tenant cultivator whether evicted or has any other dispute with the landlord or any other person is entitled to seek his remedy in a court of law instead of going before the Commissioner of Agrarian Services. This court has answered the

question in the negative, by holding "that the machinery under the Agricultural Lands law and the Agrarian Services Act is the only one available to a tenant cultivator of paddy land to secure and vindicate his terminal rights. The general procedure obtaining in Part VII of the Primary Courts Procedure Act with regard to disputes affecting lands where a breach of peace is threatened or likely, is not applicable in such situation" S.N. Silva, J., Mansoor vs O.I.C, Avissawella Police – 1991 (2) Sri Lanka Law Reports 75.

The learned Judge has referred to the observations of Lord Halsbury in the English decision of Pasmore vs Oswaldtwistle UDC (1998) A.C. 387, 394 in the above case, that, *"The principle that where a specific remedy is given by a statute, it thereby deprives the person who insists upon a remedy of any other form of remedy than that given by the statute, is one which is familiar and runs through the law."*

In an unreported case (a copy of which is filed in the appeal brief at page 192, no reference is given) Weerasekera J., (Ananda Grero J, agreeing) has observed that *"The learned District Judge has failed to appreciate the legal principle that where a right or liability is created by a statute and it cannot without great inconvenience co-exist with the common law, then the statutory right or liability must be intended to supersede the common law right, liability or remedy and not be an additional remedy, right or liability. I cannot, therefore, for the reason aforesaid* agree with the learned District Judge, when he holds that since the relief asked for in terms of Section 217(g) *of the Civil Procedure Code would not be available to the party in the Magistrate's Court under Agrarian Lands Law No. 42 of 1973, the District Court would have jurisdiction. The Plaintiff-Respondent should have sought his remedy under the Agrarian Services Law No. 42 of 1973,"* and

held that the District Court of Kurunegala has no jurisdiction to hear and determine the action.

In a similar case under the provisions of the Paddy Lands Act No. 1 of 1958 and Agricultural Lands Law No. 42 of 1973, G.P.S. de Silva C.J., held inter alia that –

> *It is undoubtedly good law 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 remedy or that Tribunal and not to others" See Kirihamy vs Dingiri Maththaya 1996 (2)* Sri Lanka Law Reports p. 175 (Ramanathan and Wijetunga JJ agreed).

In view of the above decision, we are unable to agree with the learned District Judge's finding that, "considering the above arguments, I agree with the argument of the Plaintiffs' counsel and hold that since the right of the and cultivators are protected by the Land Reform Commission Law, their rights are not affected by the transfer."

Considering the above decisions and the specific provisions provided for a tenant cultivator to seek his remedy in terms of the Agrarian Services Act, it is abundantly clear that the Plaintiff Respondents do not have the locus standi to institute this action for a declaration of tenancy in the District Court. The impugned judgment of the learned District Judge is against the law and should be vacated.

Accordingly we set aside the impugned judgment and allow the appeal. We order no costs.

JUDGE OF THE COURT OF APPEAL

Wijesundera J.,

I agree.

JUDGE OF THE COURT OF APPEAL