

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

Appeal against the order of the case
bearing No. H.C.A 27/2002 of High
Court of Hambanthota.

CA (PHC) 243/2004

HCA27/2002 (Hambanthota)

B. Jayarathne,
Jaya Sewana,
Alokapura,
Hambanthota.

Petitioner

Vs.

1. Assistant Agrarian Service,
Commissioner of Hambanthota.

2. A.A. Dayasena,
27,
Kaduru Pokuna Road,
Tangalle.

Respondents

Now

B. Jayarathne,
Jaya Sewana,
Alokapura,
Hambanthota.

Petitioner – Appellant

1. Assistant Agrarian Service,
Commissioner of Hambanthota.

2. A.A. Dayasena,
27,
Kaduru Pokuna Road,
Tangalle.

Respondent – Respondents

Before : W.M.M.Malinie Gunarathne, J
: P.R.Walgama, J

Counsel : Rasika Dissanayake with T. Wijekoon.
: Sunil R. de Silva with Chitrananda G. Liyanage for
the 2nd Respondent.

Argued on : 05.06.2015

Decided on: 19.01.2016

CASE-NO- CA (PHC) - 243/2004- JUDGMENT- 19.01.2016

P.R.Walgama, J

This appeal assails the order of the Learned High Court Judge of Hambantota, dated 10.06.2004, by which order the application of the Petitioner for a mandate in the nature Certiorari and Mandamus was refused.

The facts germane to the above application to the Provincial High Court are thus;

The Petitioner sought relief for a mandate in the nature of Writ of Certiorari to quash the order of

eviction sent by the 1st Respondent, which is marked as P1.

Further to compel the 2nd Respondent to hold an inquiry as per letter marked as P2(d) by issuing a Writ of Mandamus.

The above decision marked P1 was arrived at by the 1st Respondent in pursuant to an application made by one S.A. Dharmasena, being the tenant cultivator of an alleged eviction by the Petitioner –Appellant. An inquiry was held in terms of Section 5(3) of the Agrarian Services Act No. 58 of 1979.

At, the afore said inquiry, the 1st Respondent determined, by his order dated 01.07.1982 which is marked as P2 (a) that said Dharmasena has not been evicted from the paddy field in issue. But it is specifically stated that after evicting the Appellant from the said paddy field shall be handed over to A.A. Dayasena. (Respondent in the above application by Dharmasena)

The said Dharmasena preferred an appeal against the said determination but was unsuccessful as the appeal was dismissed by the Court of Appeal by the judgment dated 10.11.1992.

It is seen from the said impugned order made by the 1st Respondent by arriving at the determination that there is no eviction by the Appellant, but nevertheless had made order to the effect that the

Appellant should be evicted and the paddy field be handed over to A.A. DAYASENA.

Being aggrieved by the said order, the Petitioner - Appellant came by way of a writ application to quash the above decision of the 1st Respondent, and for a writ of Mandamus compelling the 1st Respondent to hold an inquiry as stated by the above letter.

It is salient to note that the Appellant was a Respondent in the application filed by said Dharmasena against the order of the 1st Respondent, in the Court of Appeal in the case bearing No. CA, 470/82. For better appreciation, the paragraph two of the judgment of the above case is quoted herein below;

"It appears that the proceedings in the Primary Court has been terminated by the Primary Court Judge holding that there had not been no dispossession of the present Appellant and therefore he had ordered Jayaratne to continue to work in the paddy field. The present appellant has not apparently taken any steps to have this order reversed. He must establish that he had in fact been evicted by the Respondent".(emphasis added)

The Learned High Court Judge referring to the said judgment of the Court of Appeal has observed that the present Appellant has not challenged the said impugned order of the 1st Respondent, although the

said order had dealt with the eviction of the Appellant from the paddy field in issue.

It is pertinent to note that the Appellant has not assailed the said order of the 1st Respondent in the above application to the Court of Appeal, as such the Learned High Court Judge held that the decision of the 1st Respondent is final and conclusive.

In the Petition to the High Court by the Petitioner – Appellant has averred that, at the inquiry under 42/3/93 the 2nd Respondent has adduced evidence and subsequently had by the letter marked as P3 requested the 1st Respondent to accept the Petitioner as the tenant cultivator. It is further stated that by the letter marked as P2(D) the Assistant Commissioner of Agrarian Services had informed Petitioner and the 2nd Respondent A.A. Dayasena to be present for the inquiry regarding the appointment of the Petitioner – Appellant as the tenant cultivator, on 30.08.1982. But it is alleged by the Petitioner – Appellant the said inquiry has been postponed indefinitely and it was never held by the Assistant Commissioner of Agrarian Services up to date.

Therefore it is contended by the Petitioner – Appellant that without holding the said inquiry the 1st Respondent is not empowered to issue the quit notice marked as P1.

Further it is to be noted that, although the 2nd Respondent has requested the 1st Respondent to accept the Petitioner – Appellant as the tenent cultivator, the 2nd Respondent has not followed the proper procedure for the said appointment.

The Learned High Court Judge after considering the above facts, was of the view that there is no proper basis to issue a writ of Certiorari and a Mandamus as urged by the Petitioner – Appellant.

Being aggrieved by the said order of the Learned High Court Judge the Petitioner – Appellant has appealed to this Court seeking inter alia, the following reliefs;

To issue a mandate in the nature of a writ of Certiorari to quash the decision marked as P1,

To issue a mandate in the nature of a writ of Mandamus to compel the 1st Respondent to hold an inquiry in respect of document marked P2(D).

The said document P1 refers to the eviction order sent by the Assistant Commissioner of Agrarian Services.

The Learned High Court Judge has given adequate reasons as to why the said order of eviction should not be set aside by a writ of Certiorari as moved by the Petitioner.

The said document marked P1 was in pursuant to the inquiry held by the 1st Respondent in to the application of one Dharmasena who claimed to be the tenant cultivator, allegedly dispossessed by the Petitioner – Appellant was held that there is no dispossession and had dismissed the application of Dharmasena. In the said order a reference has been made that the present occupier (Appellant) should be evicted and vacant possession should be handed over to the 2nd Respondent. Although the said Dharmasena has appealed against the said order to the Court of Appeal it was dismissed. Although the Petitioner – Appellant was the 2nd Respondent in the said application to the Court of Appeal had not stated his position as stated in the present application to this Court. Therefore the Learned High Court Judge was of the view that the Petitioner has not placed his grievance and now the order of Assistant Commissioner of Agrarian Services is final and conclusive. Hence in the attended circumstances there is no ground to interfere with the eviction order which was made in pursuant of the order marked as P2(A). Therefore we do not see any valid reason to interfere with the said order.

In dealing with the Appellant's application for a writ of Mandamus, to compel the 1st Respondent to hold an inquiry as per letter dated P2(D), the Learned High Court Judge was of the view that the Petitioner has

not established any reasons for the Court to issue a writ of Mandamus.

It is viewed from the case record that the 1st Respondent has not appeared nor was he represented by a counsel. The 2nd Respondent appeared and was represented by a counsel.

The counsel for the 2nd Respondent has adverted court to the letter marked P2(a) wherein an order of eviction of the Appellant has been informed by the 1st Respondent. But nevertheless the Appellant has not appeal against the said impugned order P2(a).

It is pertinent to note that Section 5 (6) of the Agrarian Services Act which states thus;

“where no appeal is made from a decision of the Commissioner within the time allowed such decision shall be final and conclusive and shall not be called in question in any court or tribunal”

Therefore it is abundantly clear that the Appellant has not taken any step to impugn the said judgment, in the above said appeal lodged by Dharmadasa. It is common ground that the appeal preferred by Dharmadasa to set aside the order made by the 1st Respondent marked as P2(a) was dismissed.

In the above setting it is intensely relevant to note that the Appellate Court has already decided the

legality of the order made by the 1st Respondent marked as P2(a). The order of eviction Marked as P1 was sent to the Appellant pursuant to the afore said order marked as P2(a).

The unequivocal position of the 2nd Respondent is that he never signed the document marked P3 and the signature appears in the said document differs from the signatures appearing in the letter dated 08.09.1999 and the affidavit tendered by him. By the afore said letter the 2nd Respondent has informed Assistant Commissioner of Agrarian Services that he has not accepted rent from the Appellant, and further the Appellant has not vacated the said paddy field. In addition it is stated that he has not signed any document to allow the Appellant to work in the disputed paddy field.

As the 2nd Respondent has denied the existence of the letter dated 11.08.1982, there cannot be an inquiry as to the appointment of the Appellant as the tenant cultivator.

In the said backdrop this court is of the view that as the P2(d) is based on a document which is challenged by the 2nd Respondent, this Court cannot issue a writ of Mandamus to compel the 1st Respondent to hold an inquiry as per said letter P2(d).

When reviewed the factual and legal matrix as stated above this court is of the view that the appeal should stand dismissed. We order no costs.

Appeal is dismissed accordingly.

JUDGE OF THE COURT OF APPEAL

W.M.M.Malinie Gunarathne, J

I agree,

JUDGE OF THE COURT OF APPEAL