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

Leela de Zoysa,

No.12,

Mendis Mawatha,

Negambo.

Plaintiff - Appellant

CA Case No. 343/2000

DC Kalutara Case No. L/4737

-Vs-

Rilhenage Pieris (Deceased),

29th Acre,

Batakulukatiya,

Bombuwela.

1st Defendant

M.H. Sunil Jayantha,

29th Acre,

Batakulukatiya,

Bombuwela.

Substituted 1A Defendant - Respondent

M.H. Sunil Jayantha (Deceased),

29th Acre,

Batakulukatiya,

Bombuwela.

2nd Defendant - Respondent

BEFORE	:	**A.H.M.D. Nawaz, J.**
COUNSEL	:	Niranjan de Silva for the Plaintiff-Appellant. Nagitha Wijesekara for the Defendant-Respondents.
Argued on	:	13.07.2015
Written Submissions on	:	29.10.2015 (For the Plaintiff-Appellant) 01.12.2015 (For the Defendant-Respondents)
Decided on	:	08.07.2016

A.H.M.D. NAWAZ, J

The Plaintiff-Appellant (hereinafter referred to as "the Plaintiff") instituted this action in the District Court of Kalutara praying for a declaration that she be declared entitled to the paddy land described in the schedule to the plaint and ejectment of the 1st and 2nd Defendant-Respondents (hereinafter sometimes referred to as "the Defendants") and all those holding under them with the consequential relief of restoration of possession. The 1st and 2nd Defendants stood in the relationship of grandfather and grandson. The Plaintiff pleaded by her plaint dated 8th September 1998 that both the Defendants had trespassed into the paddy land somewhere around September 1994 and they were not in any event the tenant-cultivators of the paddy land referred to in the Schedule to the plaint. As opposed to this allegation of trespass, the Defendants traversed in their answer that the 1st Defendant was a tenant-cultivator and denied that the learned District Judge of Kalutara had any jurisdiction to order the eviction of the Defendants from the paddy land as that question was within the competence of the Commissioner of Agrarian Services. At the time this case was instituted on 8th September 1998, the relevant law that governed the relationship of landlord and tenant in respect of paddy lands was the Agrarian Services Act No. 58 of 1979 as amended.

One has to bear in mind the principal contest between the Plaintiff and Defendants. Whilst the Plaintiff sought a declaration that the Defendants were trespassers, the Defendants claimed that 1st Defendant was a tenant-cultivator.

When the matter was taken up for trial, it was admitted among the parties that the Plaintiff was the owner of the subject matter of this action – the paddy field known as ***Galpothe Wela*** – which was morefully depicted in the schedule to the plaint dated 8th September 1998.

On 1st February 2000, ten issues were raised by the parties, 1-5 on behalf of the Plaintiff and 6-10 on behalf of the Defendants. The Court decided to treat issues no. 6-10 as questions of law and try them as preliminary issues in terms of Section 147 of the Civil Procedure Code. The Court ordered written submissions to be filed and the counsel for the defence moved to produce documentary evidence along with the written submissions in order to establish the fact that Defendants were in fact tenant-cultivators. The Counsel for the Plaintiff did not object to this procedure being adopted. On the contrary the Plaintiff followed suit with her written submissions and documentary evidence. It would appear that the trial took the form of written submissions and documentary evidence. Before I turn to this aspect of the matter, let me advert to the issues on which parties sought to resolve their rival positions.

The pertinent issues No:- 6-10 (defendants' issues) went as follows:-

No:- 6 – Is the 1st Defendant the tenant-cultivator of the land in dispute?

No:- 7 – If so, does the Court possess the jurisdiction to order ejectment which is outside the purview of the Agrarian Services Act?

No:- 8 – Does the Court have jurisdiction to make any order in respect of Agrarian Services Act?

No:- 9 – Does the Court have jurisdiction to award damages as claimed in the plaint?

No:- 10(i) – If the above issues are answered in favour of the Defendants, is the Plaintiff's action, liable to the dismissed?

No:- 10(ii) – Can (the Defendants) seek the protection under the Agrarian Services Act?

Upon a perusal of these issues, it is apparent that except for issue no.6 which involved facts to be proved, thus making it an issue of fact, the remaining issues pertained to the jurisdiction of Court thus rendering them triable as questions of law. I must state that the learned District Judge of Kalutara did utilize the documentary evidence filed by both parties to answer issue no.6 namely whether the 1st Defendant was a tenant-cultivator or not of the land in dispute. The learned Counsel for the Appellant called in question the procedure of confining the trial to written submissions and documentary testimony but I would presently allude to that argument after having dealt with the nitty gritty of the issues that surfaced at the trial.

By a judgment dated 20th June 2000, the learned District Judge of Kalutara delivered her order holding that issues no.6-10 must be answered in the affirmative, as, upon the documents produced, the Defendant (*sic*) – had been a tenant-cultivator and therefore the application must be made to the Commissioner of Agrarian Services for ejectment. Thus the Plaintiff's action was dismissed and it is against this judgment that the Plaintiff has preferred this appeal. So the answers to issues no.6-10 resolved two principal issues in the case namely

1) The applicability of the Agrarian Services Act to a dispute of this nature – Can the question of whether the 1st Defendant was a tenant cultivator be determined by the District Court?

2) The correctness of the finding of the learned District Judge that the 1st Defendant was in fact the tenant-cultivator of the land in question.

The first issue-who has jurisdiction to determine the status of parties when the status is denied?

Whether it is the District Court or the Commissioner of Agrarian Services who enjoys jurisdiction in the event of a dispute over tenancy in respect of a paddy land, has been authoritatively settled by superior courts and there is no ambiguity about the legal position namely if the dispute is over the question whether a declaration of title or tenancy could be granted in respect of a paddy land, it is settled that it is within the competence of the District Court. The instant case engaged that question. As stated before, the Plaintiff in this case claimed that the Defendants were trespassers on her land whilst the 1st Defendant sought the declaration that he was a tenant-cultivator.

Could this cause of action be properly taken cognizance of by the District Court? The precedents lean in favour of an affirmative answer to the question – *see* the observations of S.B. Goonewardene J, (P/CA) in ***Herath v. Peter***[1] wherein the learned Judge laid down the legal position quite clearly;

a) Any dispute in respect of a paddy field arising between a landlord and a tenant would have to be determined in the manner provided for in the Agrarian Services Act, and cannot be brought before a Court of law.

b) However, the above principle will apply, only where each party admits the status claimed by the other, i.e. the relationship of landlord and tenant. The jurisdiction of the Court is not ousted where the status is denied.

The S.C. precedent of ***Dolawatte v. Gamage and Another***[2] was usefully appended to the C.A. judgment. For the first proposition – i.e. the Commissioner derives jurisdiction only when the mutual status is admitted by both parties – Ranasinghe J. (as he was then) drew in aid the case of ***Henrick Appuhamy v. John Appuhamy***[3].

In ***Henrick Appuhamy v. John Appuhamy***[4] Sansoni C.J concluded, after a consideration of the provisions of the precursor of agricultural lands legislation – Paddy Lands Act No. 1 of 1958, that, as the said Paddy Lands Act creates new rights and obligations and also provides the sole machinery to which a landlord must resort if he wants to have his tenant-cultivator evicted from his paddy field. The said Act takes away the jurisdiction of the Courts by necessary implication. There is a caveat to this principle. This principle will apply only if the dispute, which arises in respect of a paddy field, is a dispute between a person, who is a landlord within the meaning of the said law, and a person, who is a tenant-cultivator within the meaning of the self-same Act. If one or the other does not in fact and in law possess the character each is so required to have and possess, then the provisions of the Paddy Lands Act cannot be availed of by one, and be imposed against the other.

When the dispute however arises in relation to the status itself as in this case, the District Court would have jurisdiction to determine and declare the status. This has been the *cursus curiae* not only in relation to Paddy Lands Act No. 1 of 1958 but also in respect of Agrarian Services Act No. 58 of 1979 which is engaged in the case.

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[1] (1989) 2 Sri.LR 325
[2] S.C. Appeal No.45 of 1983 (S.C. minutes of 27.09.1985).
[3] 69 N.L.R 29
[4] *Ibid*

Learned Counsel for the Plaintiff-Appellant has also cited the precedents of ***Tillekeratne Banda and Another v. Kalubanda and Another***[5] (G.P.S. De Silva C.J) and ***Punchi Banda v. Siriwardena & Others*** (C.A. Udalagama J)[6].

So when the learned District Judge of Kalutara assumed jurisdiction to determine whether there was a relationship of landlord and tenant between the parties, she was within her sphere of competence to decide that question because the mutual status of landlord and tenant was contested and put in issue by the parties. It has to be reiterated that where the parties are at variance as to whether the special legal relationship envisaged by a statute exists between them, but the statute does not provide for any particular procedure or special remedy for the purpose of resolving that dispute, then the jurisdiction of the ordinary courts would not be ousted by the statute -*see* ***Kirihamy v. Dingirimaththaya.***[7] Given that the learned District Judge of Kalutara correctly assumed jurisdiction, the second question supervenes namely whether her finding at the end was right having regard to the evidence placed before her. This is the second issue in the case.

Second Issue - Is the finding of the District Court correct?

What was impugned quite strenuously before this Court is the finding of the learned District Judge that the 1st Defendant was the tenant-cultivator of the paddy land. I have already pointed out that issue no.6 – is the 1st Defendant a tenant-cultivator of the land in dispute? was a question of fact, though the District Judge classified it as a question of law. Notwithstanding this classification, the parties produced documents in proof and disproof of the fact of tenancy. Both the Plaintiff and Defendants proffered documentary evidence before Court along with their respective written submissions. Both parties agreed to this course of action being adopted. Having consensually agreed to try the issues preliminarily and placed documentary evidence in proof or disproof of their respective cases, it cannot now be argued before this Court that the learned District Judge must have taken oral evidence. If in fact there was evidence before Court, whether oral or documentary, to resolve issue no.6 namely is the 1st Defendant the tenant-cultivator of the land in dispute? and the learned District Judge could reach her decision on the issue having regard only to the documentary evidence that was available, then the question of failure to take oral evidence would not arise as the sufficiency of documentary

[5] (1993) 1 Sri.LR 95
[6] (2002) 2 Sri.LR 281
[7] (1996) 2 Sri.LR 175

evidence would have afforded proof of the fact in issue in the case. One recalls that *Sir James Fitzjames Stephen* to whom our Evidence Ordinance owes its parentage defined evidence to mean and include-

(a) all statements which the court permits or requires to be made before it by witnesses in relation to matters of fact under inquiry; **such statements are called oral evidence;**

(b) all documents produced for the inspection of the court; **such documents are called documentary evidence.**

Thus documentary evidence sits comfortably on par with oral testimony and neither is inferior to the other provided an item of evidence, oral or documentary, is relevant and admissible.

Documentary evidence, if worthy of credit, could be sufficient without oral evidence to prove a fact or title. It is a cardinal rule of evidence that where written documents exist, they must be produced as being the best evidence of their own contents. Where oral testimony is conflicting, it has been the distilled wisdom that much greater credence is to be given to acts of persons rather than to their alleged words, which are so easily mistaken or misrepresented.

In the circumstances I hold that despite the classification of issue no.6 as an issue of law by the learned District Judge, the relevant question before this Court is whether the documents placed by either party go to establish on a preponderance of evidence that there existed between the parties the relationship of landlord and tenant. The learned District Judge has held the relationship so established and the question before me is whether that finding is correct and unassailable on the evidence placed before her.

Documents tendered by the Defendants

The Defendants in the case placed the following documents before Court in order to establish that the 1st Defendant was a tenant-cultivator.

V1 – an extract from the Agricultural Land Register where the entry indicates R. Peiris – the 1st Defendant as the tenant-cultivator for the year 1978.

V2 – notice dated 13.12.1982 directing the 1st Defendant R. Peiris to pay acreage taxes for the land.

V3 – notice dated 11.02.1988 directing the 1st Defendant to pay acreage taxes.

V4 – receipt of acreage taxes for the land from the 1st Defendant for the period between 1985 and 1993.

V5 – receipts for payments of acreage taxes for the period between 1994 and 1995.

V6 – receipts of payments from the 1st Defendant of the acreage taxes for the year 1996.

V7 – receipt of payments of acreage taxes for the period 1997 and 1998.

Evidentiary value of the above items of documentary evidence

V1 – the agricultural lands register entry has to be considered first. Section 45(3) of the Agrarian Services Act provides that any entry in the register of agricultural lands shall be admissible in evidence and shall be ***prima facie evidence*** of the facts stated therein.

Prima Facie Evidence

In civil cases, where the lower standard of proof on a balance of probabilities prevails, a party may satisfy his burden by a *prima facie* case, if the other party fails to disprove it -*see* the English Court of Appeal decision of ***Abrath v. North Eastern Railway Co.***[8] Our Courts have followed the above principle in a number of cases. F.N.D. Jayasuriya J sets out in detail the long line of precedents that have interpreted the words, *"prima facie evidence."-see* ***Wicremasuriya v. Dedoleena and Others (substituted).***[9] I would set down the cases which F.N.D. Jayasuriya J has cited in his illuminating judgment.

a) Drieberg, J's dictum in ***Velupillai v. Sidembram***[10]

> *"Prima facie proof" in effect means nothing more than sufficient - proof - proof which should be accepted if there is nothing established to the contrary; but it must be what the law recognizes as proof, that is to say, it must be something which a prudent man in the circumstances of the particular case ought to act upon - S.3, Evidence Ordinance*".

[8] (1883) 11 Q.B.D 440 –this decision was affirmed by the House of Lords in (1886) 11 App. Cases 247.
[9] (1996) 2 Sri.LR 95 at pp 101, 102 and 103.
[10] 31 N.L.R 99

b) Neville Samarakoon C.J in ***Undugoda Jinawansa Thero v. Yatawara Piyaratne Thera*** *S.C. Appln. 46181, S.C.M.* 5.4.82

> *"It is only a starting point and by no means an end to the matter. Its evidentiary value can be lost by contrary evidence in rebuttal...If after contrary evidence has been led the scales are evenly balanced or tilted in favour of the opposing evidence that which initially stood as prima facie evidence is rebutted and is no longer of any value.* ***Evidence in rebuttal may be either oral or documentary or both....*** *The Register is not the only evidence".*

Samarakoon C.J is quite illustrative. Once *prima facie* evidence is produced by one party, the onus is on the other to rebut it by contrary evidence. The opposing evidence can erase the effect of the *prima facie* evidence evenly or it is so cogent that the case could tilt in favour of the party who tenders the opposing and contrary evidence. This evidence need not necessarily take the form of oral testimony. It could be documentary evidence alone. In my view both *prima facie* evidence and contrary evidence in rebuttal can be oral or documentary or both. What matters in the end is how cogent the evidence is in order to establish the fact in issue in the case. The list of authorities on *prima facie* evidence is exhaustive.

c) S.B. Goonewardene J in ***Herath v. Peter***[11] - another case which expressed similar views in regard to the construction of the words *"prima facie evidence"* in relation to Agricultural Lands Register entries.

d) Parinda Ranasinghe J (as he then was) in ***Dolawatte v. Gamage***.[12] - as stated before in this judgment, Justice S.B. Goonewardene J followed in ***Herath v. Peter*** the views expressed by Parinda Ranasinghe J (as he then was) in ***Dolawatte v. Gamage***.

F.N.D. Jayasuriya J in his judgment in ***Wicremasuriya v. Dedoleena and Others (substituted)***[13] also cites comparative jurisprudence.

e) ***Smithwick v. National Coal Board***[14] (Denning L.J)

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[11] (1989) 2 Sri.LR 325 at 326.
[12] S.C.Appeal No. 45/83-SC Minutes of 27.09.85.
[13] 1931 AD 466 AD at 478-479
[14] 1950 2 KB 335 at 352

f) ***Rex v Jacobson and Levy***[15] (Stratford J.A)

g) ***Burdens and Presumptions*** *by* ***Nigel Bridge*** (*later* ***Lord Bridge***) 12 Modern Law Review 273 at 277.

In fact the dictum of Stratford J.A. in the South African case of ***Rex v. Jacobson and Levy***[16] on *prima facie* proof is worth recapitulation-

> *"Prima facie" evidence in its more usual sense, is used to mean prima facie proof of an issue the burden of proving which is upon the party giving that evidence. In the absence of further evidence from the other side, the prima facie proof becomes conclusive proof and the party giving it discharges his onus.*

Additionally let me also cite ***A.T. Denning (Lord Denning)*** on ***Presumptions and Burdens*** in 61 Law Quarterly Review 379 (1945), ***Presumptions, standards and burdens-managing the cost of error*** 13 Law, Probability & Risk (2014) 13 at 221-242 and ***Evidential Presumptions*** (2002) New Law Journal 152 at 217-218.

The Agricultural Lands Register entry **V1,** being an entry for the year 1978, produced by the 1st Defendant indicates him as a tenant-cultivator under the father of the Plaintiff and furnishes *prima facie* evidence of the fact of tenancy. This was not rebutted by the Plaintiff. This was the only entry in terms of Section 45 of the Agrarian Services Act that was produced by the Defendants.

I must state that since this *prima facie* evidence was not rebutted it became conclusive proof of tenancy for the year 1978. Apart from V1, there were other items of documentary evidence (V2 to V7) that the Defendants furnished to demonstrate that the character of tenancy continued beyond 1978.

Notices to pay (V2 and V3) and Receipts for Payment of Acreage Taxes (V4 to V7)

The notices (V2 to V3) sent by the Agrarian Services Centre, Dodangoda, were directions to the 1st Defendant to pay acreage taxes for the relevant periods. Then the payments which are evidenced by V4 to V7 have been made by the 1st Defendant in respect of the land he claimed to be the tenant-cultivator and these payments are usually made under the Agrarian Services Act.

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[15] 1931 AD 466 at 478.

[16] *Supra*

There is no reason why a person should pay acreage taxes if he does not have an interest in the land. This conduct on the part of the 1st Defendant is influenced by the fact in issue – whether the 1st Defendant is a tenant-cultivator of the land in question.

One cannot get away from the fact that the notices (**V2** and **V3**) sent by the Agrarian Services Center requesting the 1st Defendant to pay acreage taxes shows that he was considered a person who had an interest in the land. Why should the Agrarian Services Center in the area direct the 1st Defendant to pay acreage taxes if he is not a tenant-cultivator of the land?

These items of evidence enhance the probability of the assertion of the Defendants that the 1st Defendant continued to be the tenant-cultivator of the land in question. One cannot simply ignore the evidential value of the receipts of payments because it is evidence indicating pecuniary interest of the 1st Defendant in the land and I see no reason to disturb the finding of the learned District Judge that the 1st Defendant was in fact a tenant-cultivator having regard to the fact of payment made by the 1st Defendant. In fact I regard receipts as admissions against the pecuniary interest of the acreage tax payer namely the 1st Defendant. Therefore these receipts issued by the Agrarian Services Committee of the relevant area have probative value unless contradicted by the Plaintiff. So the payment of acreage taxes up to 1998 establishes the fact that the 1st Defendant had continued to be the tenant-cultivator as at the time when the action was instituted on the 8th September 1998.

Documents produced by the Plaintiff

The only document that was produced by the Plaintiff was an Agricultural Land Register extract, which shows that the column for the name of the *ande* cultivator for the year 1996 is left blank in that document. This shows that there is no tenant-cultivator indicated for the year 1996. The absence of the name of the 1st Defendant from the register for the year 1996 is relevant and it only shows that there is no *prima facie evidence* of tenancy. Even so, it is open to the Defendants to show by contrary evidence that the 1st Defendant continued to be a tenant-cultivator even in 1996. Section 45(3) of the Agrarian Services Act does not shut out other evidence being brought to show that the 1st Defendant was indeed a tenant-cultivator in 1996. Section 45(3) of the Agrarian Services Act renders an entry in the register presumptive. If there is no entry for the year 1996, the only inference is that there is no *prima facie* evidence of tenancy as encapsulated in the said

provision. But that cannot preclude a person claiming to be a tenant-cultivator from providing other evidence to establish his claim. I regard **V6** as such evidence. **V6** was issued by the Agrarian Services Centre as a receipt for payment of acreage tax that the 1st Defendant had paid for the year 1996. It is an admission of liability of the 1st Defendant - an item of evidence which carries weight because it is against the pecuniary interest of the 1st Defendant.

If the Plaintiff had wanted to challenge this evidence, he should have made an application to the learned District Judge but a failure to do so enhances the probability of the assertion of the 1st Defendant and certainly the learned District Judge was quite right in accepting V6 as evidence of payment by the 1st Defendant for 1996.

Rights of parties as at the time of action

I would now advert to another salient issue in the trial. It is trite law that rights of parties must be determined as at the time of the action -*see* the Privy Council decision of ***Silva v. Fernando,***[17] ***Sharieff v. Marikkar,***[18] ***Eminona v. Mohideen,***[19] ***Lenorahamy v. Abraham,***[20] ***Kader Mohideen & Co, Ltd v. Nagoor Gany,***[21] and ***Jayaratne v. Jayaratne and Another.***[22]

This action was instituted by the Plaintiff by a plaint dated 8th September 1998 and the Plaintiff did not produce any Agricultural Land Register extract pertaining to the year 1998 to show the absence of the name of the 1st Defendant from that register for 1998. The absence of the name of the tenant from the Agricultural Land Register of 1998 would have been significant and relevant as the rights of parties ought to be determined as at the time of the action and the Plaintiff's failure to adduce such evidence of the 1998 register has to be taken to be evidence falling within Section 114(f) of the Evidence Ordinance. On the contrary the Defendants produced **V7** (the payment of acreage taxes for the year 1997/98) to show that the 1st Defendant continued as a tenant-cultivator even at the time when the action was instituted.

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[17] 15 N.L.R 499
[18] 27 N.L.R 349 at 350
[19] 32 N.L.R 145 at 147
[20] 43 N.L.R 68 at 69
[21] 60 N.L.R 16 at 19
[22] (2002) 3 Sri.LR 331

If the Plaintiff could produce the 1996 register and show court that the name of the 1st Defendant was absent from that register in 1996, one fails to understand as to why the 1998 register could not have been produced as the year 1998 is quite material to the determination of rights of the parties in the case.

Rebuttable Presumption in Section 114(f) of the Evidence Ordinance

Therefore this Court draws the presumption illustrated in Section 114(f) of the Evidence Ordinance. This presumption would be to the effect that the Plaintiff did not produce this evidence because if produced, it would have been unfavorable to the Plaintiff. It has to be remembered that the presumption encapsulated in Section 114(f) of the Evidence Ordinance is a rebuttable presumption and it must be stated that the Plaintiff has not chosen to rebut that presumption that arises from the failure to produce the Land Register extracts for the year 1998, as the plaint was filed in that year.

It is the 1st Defendant who has on the contrary produced the payment of acreage taxes for the year 1998 (**V7**) and all this evidence cumulatively shows that R. Peiris the original 1st Defendant was the tenant-cultivator of this paddy land in question. Therefore on the totality of the evidence that was placed before the learned District Judge of Kalutara, it is crystal clear that the Defendants have established that the 1st Defendant was the tenant-cultivator of the land in question. Therefore there was no misdirection on the part of the learned District Judge when she arrived at the conclusion in the judgment dated 20th June 2000 that the original 1st Defendant was the tenant-cultivator of the land in question.

It is indisputable that the moment the learned District Judge comes to a finding that there is a relationship of landlord and tenant between the parties, the ejectment of the tenant has to take place in accordance with the provisions of the Agrarian Services Act before the Commissioner –*see* ***Henrick Appuhamy v. John Appuhamy***[23] and ***Herath v. Peter.***[24]

In the circumstance I affirm the judgment of the learned District Judge of Kalutara dated 20th June 2000 and dismiss the appeal with costs.

JUDGE OF THE COURT OF APPEAL

[23] See FN 3
[24] See FN 1.