MUNASINGHE
v.
SOMAPALA

COURT OF APPEAL
TILAKAWARDANE, J. AND
UDALAGAMA, J.
CA NO. 751/95
DC KURUNEGALA NO. 976/MB
MARCH 27, 2001
APRIL 02, 2001

Agrarian Services Act – s. 2 (1), s. 11 (2), s. 11 (9), s. 68 – Tenanat cultivator becoming usufructuary mortgagee – Remaining a tenant cultivator – Cessation of tenancy – Rights in violation of provisions in the Act – Null and void.

The plaintiff-respondent-respondent prayed for a discharge of a usufructuary mortgage and to eject the defendant-appellant. The defendant-appellant claimed *ande* rights.

The position of the plaintiff-respondent was that, when the defendant-appellant became a usufructuary mortgagee and by operation of law he also became an owner cultivator thereby precluding him from claiming rights of tenancy; and that he loses his claim to rights of an *ande* cultivator.

The District Court held with the plaintiff-respondent.

On appeal –

Held:

(1) By virtue of s. 2 a cultivator of any extent of paddy land let to him under either oral or written agreement shall be subject to the provisions of the Act.

(2) Cessation of Tenancy rights in violation of s. 11 (2) would be null and void.

(3) Interpretation section (s. 68) could not be used to deprive a tenant cultivator of his tenancy rights simply because the tenant cultivator acquired the status of a usufructuary mortgagee.

Per Udulagama, J.

> "Notwithstanding the meaning given to "Owner Cultivator" in s. 68 even if he becomes a ususfructuary mortgagee, vide s. 2, when the appellant became a 'Tenant Cultivator' he could cede his rights only as provided for by ss. 11 (2) and 11 (3) . . . the tenant only keeps to himself the ground rent due to the landlord by virtue of the said usufructuary bond."

APPEAL from the judgment of the District Court of Kurunegala.

M. R. De Silva for substituted defendant-appellant.

D. M. G. Disanayake with *C. Liyanage* for plaintiff-respondent.

Cur. adv. vult.

July 23, 2001

UDALAGAMA, J.

The plaintiff-respondent filed DC Kurunegala case No. 975/MB against 1
the defendant-appellant praying for a discharge of usufructuary mortgage bond No. 19666 dated 27. 09. 68 and to eject the defendant from the paddy-field in question. The defendant-appellant filed answer claiming tenancy rights (*Ande*) and denied the plaintiff-respondent's right to eject him.

The submission of the plaintiff-respondent appeared to be that vide section 68 of the Agrarian Services Act which provides for the interpretation of sections, that the defendant-appellant when he became a usufructuary mortgagee by the operation of law he also became 10
an owner cultivator thereby precluding him from claiming rights of tenancy. That he loses his claim to rights of a tenant cultivator.

Apparently, this submission had been accepted by the learned District Judge and by his judgment dated 11. 12. 95 he has held, *inter alia*, that the defendant-appellant ceased to be a tenant cultivator on the execution of the usufructuary mortgage bond referred to above.

The defendant-appellant appealed therefrom.

Perusing the evidence particularly the answers in cross-examination of the plaintiff-respondent it is abundantly clear that the latter received his share in money in lieu of same in paddy (page 54 of the proceedings). The plaintiff-respondent had also accepted the position of the defendant-appellant that the latter's name appeared in the Paddy Lands Register as an '*Ande*' cultivator (pages 67 & 68 of the proceedings). In answer to the last question in cross-examination the plaintiff-respondent has categorically stated that the appellant had worked the field from 1966 which is clearly two years before the date of the execution of the mortgage bond referred to above. Apart from this, P2, a document produced by the plaintiff-respondent from his own custody comprising details of the Paddy Lands Register, had the appellant's name as the tenant cultivator and the name of the respondent as the owner in the respective columns of the said document. It was not the position of the plaintiff-respondent that the defendant-appellant was, in fact, a "labourer" or that wages were paid for his services. Significantly, however, the plaintiff-respondent has also admitted that the defendant-appellant paid him money. This reference is obviously to the money in lieu of the share of paddy the plaintiff-respondent was entitled to from the appellant. The submission of the respondent that the appellant was cultivating the field by virtue of P1 is not borne out by P2 which classifies the appellant as the tenant cultivator of the respondent. Considering this evidence, I am inclined to the view, contrary to the stance taken up by the respondent who thereby contends that upon the purported discharge of the usufructuary bond referred to above possession should be returned to the respondent, that, in fact, it is the appellant who had accrued rights of a tenant prior to the execution of the said mortgage bond and is thereby entitled to the benefits granted to a tenant under section 2 (1) of the Agrarian Services Act and that a tenant cultivator's rights could not be ceded unless provisions of sections 11 (2) and 11 (3) of the said Act was complied with. Sections 11 (2) and 11 (3) of the Agrarian Services Act reads as follows:

"11 (2). A tenant cultivator of any extent of paddy land may, with the written sanction of the Commissioner given after such inquiry and on such terms as he may deem necessary, cede his rights in respect of such extent to his landlord if such landlord is also the owner of such extent.

11 (3) Any transfer of possession by the tenant cultivator in violation of provisions of subsection (1) or (2) shall be null and void and shall render the person in occupation of such extent to be evicted in accordance with the provisions of section 6 and on such eviction the provisions of subsection 5 of section 4 shall apply."

Thus, a cessation of tenancy rights in violation of section 11 (2) would be null and void vide the provisions of section 11 (3) referred to above. I am of the view that the learned District Judge erred when he came to a finding that the interpretation section in the Agrarian Services Act could be used to deprive a tenant cultivator of his tenancy rights simply because the tenant cultivator acquired the status of a usufructuary mortgagee. Besides, there is no provision in law which prevents a tenant cultivator acquiring such status while being a tenant. In the instant case the tenant only keeps to himself the ground rent due to the landlord by virtue of the said usufructuary mortgage bond.

By virtue of section 2 of the Agrarian Services Act a cultivator of any extent of paddy land let to him under either oral or written agreement shall be subject to the provisions of the Act. The plaintiff-respondent as stated above had in no uncertain terms admitted that the respondent did cultivate the field in question prior to the execution of the mortgage bond, nowhere in the evidence of the plaintiff-respondent has he stated that the defendant was only a paid labourer. A tenancy is thus created vide section 2 of the Agrarian Services Act and as in the instant case the defendant becomes the tenant cultivator of the particular extent of paddy land. Such a tenant cultivator can cede his rights of tenancy only with the written sanction of the

Commissioner under the provisions of the Act as stated above. Notwithstanding the meaning given to "owner cultivator" in section 68 of the Act even if he becomes a usufructuary mortgagee, vide section 2 of the said Act, when the appellant became a tenant cultivator he could cede his rights only as provided for by sections 11 (2) and 11 (3) referred to above.

On a consideration of the evidence led in the lower Court and also considering the documents filed and for the reasons stated above, I would in the circumstances hold that the learned District Judge erred when he came to a finding on the arguments placed before him by the respondent and the interpretation relied upon by the respondent that by operation of law once the tenant cultivator loses his rights of tenancy he is precluded from claiming tenancy rights subsequently.

I hold that on the evidence led that it was abundantly clear that the defendant-appellant was the tenant even before the usufructuary mortgage bond and that the appellant even after the acquisition of the status of a usufructuary mortgagee for a limited period as evident from P1 would continue to be a tenant cultivator and his substantial rights to tenancy would continue and only come to an end, vide provisions of sections 11 (2) and 11 (3) of the Act referred to above.

For the reasons stated above, the appeal is allowed.

The judgment of the learned District Judge dated 11. 02. 95 is set aside with taxed costs.

TILAKAWARDANE, J. – I agree.

Appeal allowed.