

SOMAWARDENA
v.
SARANELIS SINGHO

COURT OF APPEAL.

F. N. D. JAYASURIYA, J.

C. A.87/80.

A. T. KU/AGS. DAMBADENIYA/(1).

241 AT. KURUNEGALA.

JANUARY 15, 1997.

Agricultural Tribunal – Findings of Assistant Commissioner – Agricultural Lands Register-Entries only prima facie proof but rebuttable by contrary evidence at Agricultural Services Inquiry – Evaluation of evidence – Tests of consistency and inconsistency inter se, – Means of knowledge. Testimonial trustworthiness and credibility, interest and disinterestedness, – Probability and Improbability – Evidence Ordinance, section 3 – Agrarian Services Act, sections 45, 68 – Definition of ande cultivation.

Where the Assistant Commissioner holding an Agricultural Services Inquiry applying the tests of consistency and inconsistency *inter se*, means of knowledge, testimonial trustworthiness and credibility, interest and disinterestedness, probability and improbability (though without expressly

referring to them) found that the *prima facie* proof afforded by entries in the Paddy Lands Register or Agricultural Lands Register had been effectively rebutted, the Court has no jurisdiction and power to interfere with the correct findings of fact reached by him.

If a cultivator occupying a paddy field on a tenancy cultivates the paddy field jointly with a hired agricultural labourer, he does not contravene any prohibition in the law and his joint employment of hired agricultural labourers does not result in any forfeiture of his rights as an *ande* cultivator as defined in section 68 of the Agricultural Services Act.

Cases referred to:

1. *Velupillai v. Sidambaran* 31 N.L.R. 87, 99.
2. *Undugodage Jinawansa Thero v. Yatawara Piyaratna Thero* S.C. Application No. 46/81 – S.C. Minutes, of 5.4.1982.
3. *Herath v. Peter* (1989) 2 Sri L.R. 325, 326 (with copy of *Dolawatte v. Gamage*)
4. *Dolawatte v. Gamage* S.C. 45 of 1983.
5. *Viswanathan v. Thurairajah* 70 N.L.R. 83, 84.
6. *Babanis v. Jamis* (1984) 2 Sri L.R. 344.

APPEAL from Order of Agricultural Tribunal of Kurunegala.

Senaka Walgampaya with *Nimal Jayanath* and *Sumeda Suraweera* for respondent-appellant.

H. Ghazzaly Hussain for substituted Applicant-Respondent.

Cur. adv. vult.

January 15, 1997.

F. N. D. JAYASURIYA, J.

On the joint oral motion of Mr. S. C. B. Walgampaya and Mr. Ghazzaly Hussain, Attorneys-at-Law and for the reasons adduced by them jointly, this Court vacates and sets aside the order of dismissal of this appeal pronounced on the 4th of September, 1996.

I have heard both learned counsel for the appellant and the respondent. The principal point urged by the learned counsel for the appellant was to the effect that the Applicant had failed to produce documentary evidence in support of his case, whereas, the respondent had produced documents V1 to V7 before the Inquiring Officer in support of his position and assertions made at the inquiry. Even a certified copy if produced from the Paddy Lands Register or

Agricultural Lands Register, such entry is merely *prima facie* proof of the matters set out in such a document. Justice Drieberg in *Velupillai v. Sidambaran*,⁽¹⁾ gave his mind particularly to the effect of the term "*prima facie* proof". His Lordship observed, this expression in effect means nothing more than sufficient 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, *vide* Section 3 of the Evidence Ordinance. Chief Justice Samarakoon in the decision in *Undugodage Jinawansa Thero v. Yatawara Piyaratne Thero*⁽²⁾ cited with approval the dictum of Justice Drieberg and applied it to certain documents which were produced in the course of the Agrarian Services inquiry. His Lordship after making certain valuable observations held that cogent oral evidence has always the effect of rebutting the presumption arising in regard to *prima facie* proof. "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". Justice S. B. Gunawardena in *Herath v. Peter*,⁽³⁾ refers to the judgment of Chief Justice Samarakoon and the judgment of Justice Parinda Ranasinghe in the unreported case of *Dolawatte v. Gamage*,⁽⁴⁾ a copy of that unreported decision is attached as an annex to the judgment in *Herath v. Peter*.⁽³⁾ Thus on a consideration of these authorities and the principle laid down therein, it is an established and trite law that cogent and convincing oral evidence led at an Agrarian Services inquiry has the effect of completely rebutting the presumption arising in regard to *prima facie* proof as spelt out in section 45 of the Agrarian Services Act and in regard to other documents which are produced at such an inquiry such as the Farmers' **Identity Book entries**. The other documentary evidence adduced on behalf of the respondent-appellant marked as D2, D3, D5 are receipts for the payment of acreage tax. These documents are receipts for payments made on 18.10.78; 16.5.79, and 5.8.81 and record payments made long after this controversy had arisen – *Post Litem Motam* and not *Ante Litem Motam* – and are of no evidentiary

weight and value. On the contrary, document marked as P2 substantiates the applicant's version and rebuts the false assertion that applicant Saranelis Singho had no connection or interest in the paddy field in question. By document P2 the respondent's witness and the respondent's predecessor in title Meepalage Clarency Perera offers this paddy field to the applicant first, at a reduced price and states that if he does not wish to purchase it that she would be selling this paddy field to an outsider at a higher price. Document produced marked as D6 ceases to have any efficacy or validity after the 24th of October 1973, whereas, the illegal eviction is proved to have taken place on 22.5.1979.

Thus, a correct adjudication and decision upon this application would depend on a critical analysis and evaluation of the oral evidence led before the Assistant Commissioner of Agrarian Services by all parties to that inquiry. In view of the submission advanced by learned counsel for the appellant, I proceed to peruse the evaluation of the evidence indulged in by the Inquiring Officer, with particular reference to the relevant tests of credibility which are usually employed to arrive at a correct finding on evaluation of evidence.

The applicant Saranelis Singho, his son T. K. Pragnakeerti, R. A. Kiri Mudiyanse and W. M. Raphael Appuhamy have given evidence in support of the position and assertions advanced on behalf of the applicant, in regard to the crucial facts in issue upon this inquiry. All these witnesses have testified to the effect that M. A. Jamis Appuhamy, the husband of witness Meepalage Clarency Perera, had let the paddy field named Velikumbura which is situated in the Epakande Grama Sevaka Division in Polgahawela and which is in extent 5 lahas of paddy sowing to Saranelis Singho as far back as 1942 and that he had been cultivating the said paddy field as an *ande* cultivator till the date of his wrongful eviction from the paddy field on 22.5.79. These witnesses have testified to the effect that Saranelis Singho regularly paid the land-owner's share of the produce from the paddy field (rent) to M. A. Jamis Appuhamy's wife, the aforesaid Clarency Perera, her son Kalu Mahattaya alias Ranjith Narangoda and to Santiago Appuhamy who was an agent for collection of the rent of the aforesaid M. A. Jamis Appuhamy, the landlord. Thus, where the letting of the paddy field by Jamis

Appuhamy on a contract of a tenancy to the Applicant and the payment of rent without default to the aforesaid persons on behalf of the landlord by Saranelis has been established by their evidence. Thus, the test of consistency and inconsistency *inter se* is applied to the evidence of these witnesses, these witnesses have corroborated each other to the hilt and established these facts by cogent, convincing and overwhelming evidence. W. M. Raphael Appuhamy, who has stated the aforesaid facts in his evidence, happens to be a brother of the former landlord, M. A. Jamis Appuhamy, and has specifically referred to the fact of letting of this paddy field in question by Jamis Appuhamy to Saranelis Singho and he has stated that he has been present at the threshing floor when out of the proceeds of the harvest half share was handed over by Saranelis Singho to the landlord's representatives as rent. Raphael Appuhamy is a brother of Jamis Appuhamy and, therefore, when the test of Interest and Disinterestedness of a witness is applied to his testimony, no reasons have been elicited at all as to why he should give untrue evidence against his own brother's interests. These witnesses specially Raphael Appuhamy, Kiri Mudiyanse, Pragnakeerti (at a later point of time) had been present when the relevant processes of cultivation of the paddy field was undertaken and when the harvest was threshed and the produce divided at the threshing floor. Therefore, these witnesses are persons having special Means of Knowledge and when that test is applied in regard to the tenor and effect of their evidence adduced, the Assistant Commissioner has arrived at a favourable finding in regard to their testimonial trustworthiness and credibility. It is true that the Assistant Commissioner who is not a trained lawyer has not expressly used and referred to these tests of credibility, but on a review of his order, it is apparent that the germ of these tests were operating in his mind when he arrived at a favourable finding in regard to their testimonial trustworthiness and credibility.

In regard to the issue whether the applicant, Saranelis Singho, himself carried out the relevant processes of cultivation which are spelt out in the definition of an *ande* cultivator in section 68 of the Agrarian Services Act, certain issues arise, having regard to the course of cross-examination of Saranelis Singho, Pragnakeerthi and the evidence volunteered by them under cross-examination. Saranelis Singho has stated that before he obtained an appointment

with the government, he indulged in most of these operations of cultivation, but after he received such appointment, that he did indulge in these processes of cultivation only on Saturdays and Sundays and that he got the services and assistance of two of his sons to indulge in these operations and at times he employed persons on hire and obtained their assistance too in carrying out certain processes of cultivation. Witness Pragnakeerthi, applicant's son, has not corroborated Saranelis Singho to the hilt on the processes of cultivation of the paddy field and the person who helped and assisted in the said process. The law has undergone an amendment and a change and the law as it stands today is not the law that obtained under the Paddy Lands Act and the Agricultural Lands Law. Under the Paddy Lands Act enlistment of hired labour in any form resulted in a violation of a prohibition laid down by the law and such a contravention attracted a forfeiture of the *ande* cultivator's rights. In fact, Justice H. N. G. Fernando, delivering the Judgment in *Viswanathan v. Thuraiajah*,⁽⁵⁾ was engaged in interpreting the definition of a tenant cultivator under the Paddy Lands Act. His Lordship remarked in that context the definition contemplates three different kinds of work (ploughing, sowing, reaping) for which actual labour is necessary and if hired labour is, in fact, employed for two of these kinds of work, then the cultivator is not a tenant cultivator. The present law has now undergone a material change.

The definition of a cultivator in section 68 of the Agrarian Services Act is illuminating and expressive. A cultivator is defined in relation to a paddy land as "any person who by himself or by any member of his family or **jointly with any other person** carries out on such extent (a) two or more of the operations of ploughing, sowing and reaping; and (b) the operation of tending or watching the crop in each season during which paddy is cultivated on such extent". Thus, if a cultivator occupying the paddy field on a tenancy cultivates the paddy field jointly with a hired agricultural labourer, he does not contravene any prohibition in the law and his joint employment of hired agricultural labourers does not result in any forfeiture of his *ande* cultivator rights.

The evidence led on behalf of the applicant nowhere discloses that he handed over the cultivation processes in respect of the paddy field in question entirely to hired agricultural labourers. The

applicant's evidence at its worst merely establishes that he, together with his two sons and hired agricultural labourers, took part in certain part operations of cultivation carried out on this paddy field. Joint employment of hired labour on a part-time assignment of that nature does not incur forfeiture of the *ande* cultivator's rights in terms of the definition contained in section 68 of the Agrarian Services Act. Thus, it is evident that the Assistant Commissioner has indulged in a very careful, detailed and analytical evaluation of the evidence led on behalf of the applicant, applying the Tests of Consistency and Inconsistency *inter se*, Test of Interest and Disinterestedness of the witness, Test of Means of Knowledge of the witness and the Test of Probability and Improbability of the evidence of the witness. Though he had not referred in express terms to these tests and processes not being a trained lawyer, he has held, having applied these tests impliedly, that these witnesses have given evidence which is credible and which is entitled to testimonial trustworthiness. His finding has been that the oral evidence led on behalf of the applicant is both cogent, convincing and overwhelming. Such evidence is sufficient in the words of Justice Samarakoon to rebut the presumption in regard to *prima facie* evidence arising by reason of the adduction of documentary evidence. Both the Inquiring Officer and the Court of Appeal are entitled to act upon such cogent, convincing and overwhelming oral evidence even in the face of such documentary evidence.

Now I turn to the Inquiring Officer's evaluation, analysis and assessment of the evidence led on behalf of the respondent-appellant. Somawardena, the aforesaid Meepalage Clarency Perera and her son, Ranjith Narangoda, have given evidence in support of the respondent's case. It is in evidence that the respondent obtained a transfer of the paddy field in question from the witness, Meepalage Clarency Perera, on the execution of the transfer deed bearing No. 3469 on **15.7.79**. The respondent in his evidence has stated that before obtaining such transfer in his favour, he has been working this paddy field on behalf of Clarency Perera even at the time of the alleged eviction which is alleged to have taken place on **22.5.79**. Thus, the respondent, on his own admission and confession, had been involved and engaged in processes of cultivation of this paddy field prior to the date of acquisition of title by him and he had

obtained a transfer deed in respect of the paddy field in his favour on 15.7.79. (Vide document marked D1.)

It is interesting to ascertain the position of Clarency Perera in regard to the person who cultivated the paddy field in question. She has categorically stated in her evidence that the applicant Saranelis Singho, was never employed as a watcher on the coconut estate which was adjacent to this paddy field and also she has categorically asserted that neither her husband Jamis Appuhamy, nor herself had ever permitted the applicant to enter the paddy field and cultivate it in any capacity whatsoever. She stoutly denied that the applicant ever cultivated this paddy field as an *ande* cultivator and that he ever paid a part of the produce derived from the field as the land-owner's share to Jamis Appuhamy, to herself, to her son or to any agent of Jamis Appuhamy. Her position is as follows: She has stated at one point that the said paddy field was cultivated by one Nimal and that before it was sold to the respondent Somawardena, that the paddy field was cultivated by herself through the agency of Nimal and that Nimal handed over the produce from the paddy field to her. However, Somawardena, referring to the cultivation of the paddy field long before he took over the paddy field and long before he purchased the paddy field, has stated that Clarency Perera cultivated the paddy field by employing several hired agricultural labourers. He has specifically stated thus: "Before I purchased this paddy field in extent 5 lahas, Clarency Perera employed several agricultural labourers and worked the paddy field herself through their services. These agricultural labourers were Alwis, Rajapakse, Piyadasa, Suwaris." Thus, the evidence of the respondent Somawardena is wholly inconsistent and contradictory to the evidence of Clarency Perera in regard to the identity of the persons who cultivated the said paddy field. Besides, the evidence on this point of Clarency Perera and her son, Ranjith Narangoda is also equally contradictory and inconsistent. The Assistant Commissioner has referred to these grave discrepancies, contradictions and inconsistencies in his order and he has in effect applied the Test of Consistency and Inconsistency *inter se* and has arrived at an adverse finding in regard to their testimonial trustworthiness and credibility. He has referred to the fact that witness Ranjith Narangoda, although he claimed to know much information about the paddy field in question was constrained under cross-

examination to admit that he had never been to the paddy field when the paddy harvest was threshed and the paddy was divided between the respective claimants to the produce. Thus, applying the Test of Means of Knowledge, the Assistant Commissioner has arrived at an adverse finding in regard to his testimonial trustworthiness. The Assistant Commissioner has applied the Test of Probability and Improbability in regard to the testimony of Clarency Perera when she imprudently stated that she brought labourers from Yakkala and proceeded to cultivate the paddy field with hired labour from Yakkala when the paddy field was situated at Polgahawela. She has stated thus:

සක්කල සිටි මිනිසුන් සමග පැමිණ කුඹුර වැඩ කලා. සති ගානේ අපි වත්තට එනවා. වත්තේ මුරකරුවන් උදව් කරගෙන එහෙනුත් මිනිසුන් අරන් අපි කුඹුර වැඩ කෙරුවා.

In regard to the presence of the applicant at times on the paddy field, she has given equally highly improbable evidence. She has stated that when on occasions that she went to the paddy field, Saranelis Singho also, by some coincidence came to the paddy field; and on those occasions only that she requested him (Saranelis Singho) to look after the paddy field, but that she never entrusted the paddy field to Saranelis Singho for cultivation. She has stated thus:

මම වත්තට ආ අවස්ථාවල පැමිණිලිකරු එන බවත්, ඇය වත්තට ආ අවස්ථාවල ටිකක් කුඹුර බලා ගන්න කියා තිබූ බවත් . . . මහුට කුඹුර වැඩ කරන්න දීමක් හෝ මහුගෙන් අස්වැන්න ගැනීමක් හෝ නොකලේය. අපි වත්තට ආ විට මෙයත් එනවා. අපි ඒ වෙලාවට කීවා ටිකක් මේ කුඹුර එයාට බලා ගන්න කියා. නැතිව සම්බන්ධයක් තිබුණේ නැහැ. . . සරනේලියේ සිංඤ්ඤෝ කිසි දිනක මේ කුඹුර කොටා වැඩ කර අස්වැන්න අරන් නැහැ.

The Assistant Commissioner has spotlighted this evidence and his object in doing so, has been to apply the Tests of Probability and Improbability; thereafter he has completely rejected her evidence as palpably false. I agree with his evaluation and finding without any hesitation. Thus, on a proper and minute and analytical evaluation of the evidence, the Assistant Commissioner has arrived at an adverse finding in regard to the testimonial trustworthiness and credibility and

rejected as false the respondent's position and the testimony adduced on his behalf, I hold that there has been a very judicious, analytic, critical and correct evaluation of the totality of the evidence led in this case.

There is no misdirection in point of fact of law, there is no failure on the part of the Assistant Commissioner to take into account and consider the effect of relevant evidence led at the inquiry, there is no improper evaluation of evidence and there is no defect of procedure, on a consideration of the totality of the evidence led and on a consideration of his order. In the result, I hold that there is no error of law arising upon this appeal. The Assistant Commissioner has arrived at strong findings of fact with which this Court is in complete agreement. Thus, applying the ratio decidendi in *Babanis v. Jamis* ⁽⁶⁾. I hold that this Court has no jurisdiction or power to interfere with the correct finding of fact reached by the Assistant Commissioner. In the results, I proceed to dismiss this appeal with costs in a sum of Rs. 3,150/- payable by the respondent-appellant to the substituted applicant-respondent. The appeal is dismissed with costs.

Appeal dismissed.