DHARMARATNE
v.
HEWASUNDERA

SUPREME COURT.
G. P. S. DE SILVA, C.J.
KULATUNGA, J. AND
RAMANATHAN, J.
S.C. APPEAL NO. 140/94
C.A. NO. 148/88
MAY 05, 1995.

Agrarian Services Act, No. 58 of 1979 sections 5(3), 45(3) and 68 – Tenant Cultivator – Entry in Agricultural Lands Register.

Marthelis was the tenant cultivator of a paddy field 2 acres in extent from about 1948. The original landlord was the elder brother of the appellant who succeeded him in 1974.

On 09 May 1980 Marthelis complained to the Assistant Commissioner of Agrarian Services that he had been evicted from the paddy field on 21 March 1980.

The inquiry commenced on 24 January 1983. It was interrupted by an application by the appellant to the Court of Appeal seeking a direction that the Assistant Commissioner should also inquire into his complaint that Marthelis was not making proper use of the land. The inquiry was resumed on 02 September 1987. Marthelis admitted he had engaged several persons to cultivate the paddy field none of whom was a member of his family within the meaning of the definition of "member of the family" in section 68 of the Act. The appellant's case was that Marthelis had permitted them to cultivate a distinct portion of the land while Marthelis himself was cultivating only 4 lahas or 1/4 acre of the land.

Appellant admitted having evicted Marthelis only from the extent of 1/4 acre which Marthelis cultivated. The others who were cultivating the land had vacated it when asked. He was prepared to permit Marthelis to cultivate the said 1/4 acre but Marthelis refused; the appellant retook the entire land.

The Assistant Commissioner held that Marthelis was the tenant cultivator of the entire land and that he had been evicted therefrom. The Court of Appeal upheld the decision of the Commissioner.

Held:

(1) Although Marthelis' name appeared in the Agricultural Lands Register as tenant cultivator of the entire land in terms of section 45(3) of the Act an entry in the register is only *prima facie* evidence of the facts stated therein. The entry is rebuttable.

(2) On the facts Marthelis was not a cultivator within the meaning of section 68. The other persons who cultivated the land were not members of his family within the meaning of that section; nor did he cultivate it "jointly" with them. He was a cultivator only of 1/4 acre at the time of his eviction.

APPEAL from judgment of the Court of Appeal.

Rohan Sahabandu for petitioner.

Substituted respondent absent and unrepresented.

Cur. adv. vult.

September 24, 1995.

KULATUNGA, J.

This is an appeal by the owner of a paddy land called "Galwela *alias* Wewe Kumbura" who is dissatisfied with an order made under S. 5(3) of the Agrarian Services Act, No. 58/1979 holding that one Marthelis Hemasundera (now deceased) was the tenant cultivator of the said land and had been evicted therefrom, on or about 21.03.1980. The substituted respondent is the son of the said Marthelis Hemasundera. The appellant's appeal to the Court of Appeal was dismissed. Hence this appeal.

Special leave to appeal was granted on the question whether the said Marthelis was a cultivator within the meaning of S. 68 of the Agrarian Services Act at the time of the alleged eviction.

It is common ground that Marthelis had been tenant cultivator of this paddy field, in extent 2 acres, from about the year 1948. The original landlord was the elder brother of the appellant who was succeeded by the appellant in 1974.

On 09.05.80 Marthelis complained to the Assistant Commissioner of Agrarian Services that he had been evicted from the paddy field on 21.03.80. The inquiry into this complaint commenced on 24.01.83. It was interrupted by Court of Appeal Application No. 670/84, filed by the appellant seeking a direction that the Assistant Commissioner should also inquire into his complaint that Marthelis was not making proper use of the land. The inquiry was resumed on 02.09.87. At the end of the inquiry, the Assistant Commissioner made his order dated 27.07.88.

At the inquiry, Marthelis admitted that he had engaged several persons to cultivate the paddy field, none of whom was a member of his family within the meaning of the definition of "member of the family" in S. 68 of the Act. Marthelis said that they had assisted him. However, the appellant's case was that Marthelis had permitted them to cultivate distinct portions of the land; and that Marthelis himself cultivated only an extent of 4 lahas or 1/4 acre of the land. When Marthelis denied this, the appellant produced, marked VI certified copy of proceedings of an inquiry held by the Assistant Commissioner on 04.03.80 where Marthelis was represented by his son (the substituted respondent). According to the evidence of the son at that inquiry, the land had been cultivated in the following manner.

1. H. P. Martin – 3 lahas
2. H. P. Marthelis – 4 lahas
3. K. Hewasundera – 8 lahas
4. Peter Ranasinghe – 4 lahas
5. H. P. Premaratne – 4 lahas

In determining the truth of the appellant's version, it is relevant to note that in 1980 Marthelis was an old man who was short of hearing. At the commencement of the eviction inquiry in 1983 he was 81 years of age. His son was a Grama Sevaka and did not claim to have assisted his father in cultivating the paddy field in dispute, as a member of the family.

Appellant admitted having evicted Marthelis only from the extent of 1/4 acre which Marthelis cultivated. Others who were cultivating the land were told to vacate it, which they did. He was prepared to permit Marthelis to cultivate the said 1/4 acre but Marthelis was not agreeable to accept it. As such, he retook the entire land.

The Assistant Commissioner held that Marthelis was the tenant cultivator of the entire land and that he had been evicted therefrom. He observed that the entries in the agricultural lands register XI – X4 and the admission of the appellant that he evicted Marthelis from an extent of 1/4 support this finding. The Court of Appeal observed that the question whether Marthelis was the cultivator is a question of fact and that the appellant had failed to establish that Marthelis cultivated only 1/4, to the satisfaction of the tribunal. As such, the Court affirmed the decision of the Assistant Commissioner.

In reaching his decision the Assistant Commissioner proceeded on the basis that in view of an agreement between the parties that it was unnecessary to consider the question of sub letting the land, the only question for decision was whether Marthelis had been evicted.

I am of the view that both the Assistant Commissioner and the Court of Appeal failed to consider the relevant question whether in the light of the fact that distinct portion of the land had been given to other persons for cultivation, Marthelis had the status of a "cultivator" at the time of the alleged eviction. S. 68 of the Act provides thus:

> *"Cultivator" with reference to an extent of paddy land means any person, other than an agrarian services committee, who by himself or by any member of his family, or jointly with any other person carries 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."*

On the facts of this case Marthelis was not a 'cultivator' within the meaning of S. 68. The other persons who cultivated the land were not "members" of his family within the meaning of that section; nor did he cultivate it "jointly" with them. He was a cultivator only of 1/4 acre. He refused to remain as the tenant cultivator of that extent, even though the appellant was prepared to permit it.

No doubt Marthelis' name appears in the agricultural lands register as "tenant cultivator" of the entire land; but in terms of S. 45(3) of the Act an entry in the register is only *prima facie* evidence of the facts stated therein. It means that the entry is rebuttable; and as pointed out it has been established that at the time of the alleged eviction, Marthelis was cultivator of only 1/4 acre.

For the foregoing reasons, I allow the appeal and set aside the judgment of the Court of Appeal and the decision of the Assistant Commissioner. There will be no costs.

G. P. S. DE SILVA, C.J. – I agree.

RAMANATHAN, J. – I agree.

Appeal allowed.