

NORIS SINGHO
-V-
JOKINU FERNANDO

COURT OF APPEAL
WIJETUNGA, J.
C. A. APPLICATION NO. 6/83
JANUARY 23, 1989.

Landlord and tenant — Tenant Cultivators — Agrarian Services Act No. 58 of 1979. (date of commencement 25.9.79) — Lease of the paddy land to another with tenant cultivator's (appellant) consent — Is the complaint to the Commissioner for 'eviction' under Section 5(3) of the said Act justified? — Is the application time barred under the proviso to Section 5(4) of the said Act?

The appellant, agreeing to the respondent's suggestion to lease the said paddy land to another, had permitted a third party to cultivate the same. The appellant had thereafter complained to the Commissioner alleging that the respondent had evicted him from the said land, stating the date of eviction as 1978. The application was dismissed on the basis that the complainant had failed to prove eviction.

Held

1. The complainant not only gave up possession of his own free will but took no steps to resume possession. The Commissioner was therefore right when he held that there had been no eviction.
2. The complainant has failed to specify the date of the alleged eviction either in his application to the Commissioner or in his evidence at the inquiry. It was for the complainant to bring himself within the proviso by placing before the Commissioner acceptable proof. This too he has failed to do. Thus the application itself should be rejected on the ground that it is time-barred.

Cases referred to:

1. *Ariyaratne v. Edwin* 68 NLR 470.

F. W. Obeysekera for Complainant-Appellant

G. L. Geethananda for Respondent-Respondent.

APPEAL from the order of the learned Assistant Commissioner of Agrarian Services.

March 31, 1989

WIJETUNGA, J.

The Complainant-appellant, who claimed to be the tenant cultivator of a paddy land belonging to the respondent, appeals from the order of the learned Assistant Commissioner of Agrarian Services (Inquiries) dismissing his application on the basis that the complainant had failed to prove that the respondent had evicted him from the paddy land in question.

On the evidence led, the Assistant Commissioner has come to the finding that the complainant was the tenant cultivator. But, as on his own admission, the complainant had agreed to the respondent's suggestion to lease the said paddy land to a third party and had accordingly permitted another person to cultivate the same, the Assistant Commissioner holds that there had been no 'eviction'. He further observes that, if as claimed by the complainant, the paddy land had been leased with his consent for only one season and on his attempting to resume cultivation during the next season, a dispute had arisen, then an inference of eviction may have been possible from such circumstances. But he finds that there had been no such dispute in respect of this paddy land. Further, he comments that it is not even clear from the evidence as to when the complainant last cultivated this paddy land.

In his application dated 30.7.81, the complainant mentions the date of eviction as 1978. But, in his evidence before the Assistant Commissioner he has stated at one stage that he ceased to cultivate the paddy land from the Yala season of 1977; however, under cross-examination he has stated that he cultivated the paddy land during a season in 1978. Thus, at the very most, the complainant does not claim to have cultivated the paddy land beyond 1978. This becomes relevant to the other question which was urged in appeal, viz. whether the application is time-barred, to which I will refer later.

Section 5(3) of the Agrarian Services Act provides that where a tenant cultivator of any extent of paddy land notifies

the Commissioner that he has been evicted from such extent, such Commissioner may hold an inquiry for the purpose of deciding the question whether or not such person had been evicted."

The whole basis, therefore, of such an inquiry is the question of eviction. In *Ariyaratne v. Edwin* ⁽¹⁾ a Divisional Bench of the Supreme Court considered the meaning of the word 'evict' in Section 3(2) of the Paddy Lands Act and held that a person cannot be said to have been 'evicted' if he either gave up possession of the paddy land in question or else did not take steps to resume possession after his contract or agreement was terminated, and that in such a case, the Commissioner has no jurisdiction to exercise the powers conferred on him by Section 3(2). In the instant case too, the complainant has not only given up possession of his own free will, but had also not taken steps to resume possession. The Assistant Commissioner was, therefore, right when he held that there had been no eviction. It then follows that the Assistant Commissioner had no jurisdiction to exercise the other powers conferred on him by Section 3 of the Agrarian Services Act.

The other question raised in appeal, as mentioned earlier, is whether the application is time-barred. Section 5(4) of the Act provides that the notification referred to in subsection (3) shall be made within one year from the date of such eviction; Provided, however, that where such tenant cultivator has been evicted at any time within two years prior to the date of commencement of this Act, such notification shall be made within two years of the commencement of the Act.

As already stated, eviction has not been established in this case. Even assuming that there had been eviction, the application should be made within the time prescribed by law. The date of commencement of this Act is 25.9.79. If as stated in evidence by the complainant at a certain stage, he ceased to cultivate the paddy land in January, 1977, even the proviso to subsection (3) cannot come to his rescue as the eviction, if any, is not within two years of the date of commencement of the Act.

On the other hand, if the alleged eviction took place in 1978, the complainant has failed to specify the date of such eviction either in his application to the Assistant Commissioner or in his evidence at the inquiry. As subsection (3) requires such notification to be made within one year, subject to the proviso, it was for the complainant to bring himself within the proviso by placing before the Assistant Commissioner acceptable proof of such circumstances. This too, he has failed to do. Thus, the application itself should be rejected on the ground that it is time-barred.

For the reasons aforesaid, I would dismiss this appeal with costs.

Appeal dismissed
