

WEERASINGHE
V.
SEPALA AND ANOTHER

SUPREME COURT.

G. P. S. DE SILVA, C. J.

WIJETUNGA, J. AND

ANANDACOOMARASWAMY, J.

S. C. APPEAL NO. 72/95

C. A. APPLICATION NO. 1324/86

M. C. KEGALLE NO. 60857/85

14th June, 1996.

Primary Courts Procedure Act - Right of a tenant cultivator to cultivate a paddy land - Right to possession of land - sections 68, 69 of the Act.

An Assistant Commissioner of Agrarian Services ordered the Appellant (Landlord) "to give possession" of a paddy land to the Respondent to cultivate it as the lawful tenant cultivator. This order was not complied with; whereupon the Respondent disturbed the possession of the land by the Appellant. The Primary Court Judge, after inquiry, ordered the "restoration of possession" to the Appellant.

Held:

The order of the Primary Court Judge should have been under section 69 and not under Section 68 of the Primary Courts Procedure Act, as the dispute is not the right to possession but the right to cultivate.

Cases referred to:

1. *Loku Banda v. Ukku Banda* (1982) 2 Sri L. R. 704.
2. *Ramalingam v. Thangarajah* (1982) 2 Sri L. R. 693.

APPEAL from the judgment of the Court of Appeal.

J.C. Weliamuna for Appellant.

Respondent absent and unrepresented.

Cur. adv. vult.

2nd August, 1996.

ANANDACOOMARASWAMY, J.

This is an appeal from the judgment of the Court of Appeal allowing the application to revise the order of the Primary Court Judge and setting aside the order of the Primary Court Judge and directing the learned Primary Court Judge to hold a fresh inquiry on the dispute as to whether the Petitioner (now Petitioner-Respondent) is entitled to the right to cultivate the field as tenant-cultivator, if the parties so desire.

The facts relevant to this appeal are briefly as follows:

The Respondent to this appeal was served with an order of eviction from a paddy land for non payment of rent in terms of section 18 of the Agrarian Services Act. Consequent to the said order, on or about 14.10.83, the Appellant took over possession of the land and the Respondent was in fact evicted. The Respondent instituted an application for a writ of Certiorari seeking to quash the said order of eviction. By order dated 5-7-85, the Court of Appeal quashed the said order of eviction and directed the Respondent to deposit Rs. 2,598/- with the Asst. Commissioner of Agrarian Services Kegalle within two weeks; and failure to comply with the said order would result in eviction. This was complied with. Therefore the said Asst. Commissioner by his letter dated 23.8.85 ordered the Appellant to give possession of the land to the Respondent to cultivate the said field as the lawful tenant cultivator. The Appellant did not comply with the said order. On 4.9.85 the Respondent disturbed the possession of the land by the Appellant, when the Respondent went to cultivate the said field. Hence the Police the Complainant-Respondent-Respondent filed an action in the Primary Court and the Primary Court Judge after inquiry ordered the restoration of possession to the Appellant, which order was set aside by the Court of Appeal holding that the order by the Primary Court Judge should have been under section 69 and not under section 68 of the Primary Courts Procedure Act, as the dispute is not the right to possession but the right to cultivate. The Court of appeal therefore set aside the judgment of the learned Primary Court Judge and directed a fresh inquiry as to the right to cultivate and not as to the right of possession, if parties desire.

In *Loku Banda v. Ukku Banda*⁽¹⁾ it was held that, "the right to cultivate can vest in a person different from the person who has right to possession". As the issue before Court was whether the Respondent

had the right to cultivate the said field the right to possession does not arise and therefore the decision in *Ramalingam v. Thangarajah* ⁽²⁾ has no application to the facts of this case, and the learned Primary Court Judge misdirected himself in proceeding to inquiry in this case on the basis that it is a claim to possession of the said paddy field. and the Court of Appeal rightly set aside the judgment of the learned Primary Court Judge. However the Court of Appeal granted leave to appeal to this Court.

For these reasons we dismiss the appeal. No costs.

G.P.S. DE SILVA, C.J. – I agree.

WIJETUNGA, J. – I agree.

Appeal dismissed.