

1956 *Present* : Basnayake, A.C.J., and Weerasooriya, J.

H. R. DISSANAYAKE, Petitioner, and S. S. KULATILLEKE
(District Judge, Tangalle) and others, Respondents

*S. C. 365—Application for a Writ of Certiorari to quash the Order
made in revision by the District Court of Tangalle in
R. C. Ranna Case No. 166*

*Rural Court—Appeal and Revision—Scope of the powers of a District Judge—
Remedy when District Judge exceeds his jurisdiction—Certiorari—Rural Courts
Ordinance No. 12 of 1945, s. 41 (6).*

When a District Judge acts in the exercise of the powers of revision vested in him by section 41 (6) of the Rural Courts Ordinance, the parties to the action have no right to appear and be heard. The District Judge is not entitled, however, to make use of any material other than that which appears in the record of the Rural Court proceedings.

Certiorari lies where the District Judge exceeds his jurisdiction, because, in such a case, an error of law appears on the face of the record.

APPPLICATION for a Writ of Certiorari to quash an order made in revision by the District Court, Tangalle, in respect of a Rural Court Case.

H. W. Jayewardene, Q.C., with *G. T. Samarawickreme* and *P. Rana-singhe*, in support.

C. V. Ranawake, with *D. Vitanage*, for Respondents.

V. S. A. Pullenayegum, Crown Counsel, for Attorney-General (On notice).

Cur. adv. vult.

April 30, 1956. BASNAYAKE, C.J.—

This is an application for a mandate in the nature of a Writ of Certiorari to quash the order made in Rural Court Case No. 166 by the District Judge of Tangalle acting in the exercise of the powers of revision vested in him by section 41 (6) of the Rural Courts Ordinance No. 12 of 1945.

The petitioner was the plaintiff in the above mentioned case. He sought to recover a sum of Rs. 50 from the second respondent, being the value of the paraveni share of the produce of the land called Barawa Kumbukka at Bogammuwa for the year 1953. He gave evidence himself and called witnesses on his behalf, including the person who claimed to be the owner of the land, to establish his claim. The defendant did not take any part in the proceedings. When the claim was explained to him he said—

“I am not liable. Lands enjoyed by muttum mutha are also enjoyed by us.”

At the end of the plaintiff's case he was called upon by the President to present his defence. He got into the witness box and on oath said—

“I am not willing to state my defence in this Court”.

On the evidence before him the President of the Rural Court gave judgment in favour of the plaintiff on 8th September, 1953. The defendant did not appeal. But on 8th December, 1953, he petitioned the District Judge, who acting in revision under section 41 (6) of the Rural Courts Ordinance 12 of 1945 set aside the order of the President.

The learned District Judge has proceeded on the ground that the claim of the plaintiff was in fact one for declaration of title and that the Rural Court had no jurisdiction to entertain the action. It is urged on behalf of the petitioner that the order is bad in law on the ground that the rule of *audi alteram partem* has not been observed by the District Judge and that petitioner was not afforded an opportunity of presenting his case before the adverse order was made.

It is specially enacted by section 41 (4) of the Rural Courts Ordinance that—

“ No party to an appeal shall be entitled or be permitted to appear, either by himself or by agent or representative, before a District Judge on any appeal under this section. ”

If in an appeal the parties to an action in the Rural Court have no right to appear and be heard before the District Judge, it cannot be said that when the District Judge is acting in revision the parties can have greater rights. We are therefore unable to uphold the submission that the failure of the District Judge to afford the petitioner an opportunity of being heard vitiates his order.

The other grounds urged on behalf of the petitioner are that the order is on the face of it wrong in law, and that the District Judge has acted in excess of his jurisdiction.

An examination of his order reveals that in arriving at his decision the learned District Judge appears to have travelled outside the record of the case and made use of material in the defendant's petition to him.

Sub-section (6) of section 41 of the Rural Courts Ordinance gives the District Judge power to examine the record of any case and on the material in the record satisfy himself as to the propriety of the proceedings or of any order, decision or sentence made or passed thereon by the Rural Court. In the instant case by not confining himself to the material in the record the learned District Judge has exercised a power not granted him by the section and thereby exceeded his jurisdiction.

It is not necessary for the purpose of this case to discuss the other grounds relied on by learned Counsel for the petitioner. It is sufficient to say that *Certiorari* lies in a case where an error of law appears on the face of the record. That principle has been recently affirmed in the case of *R. v. Northumberland Compensation Appeal Tribunal*¹.

We accordingly quash the order of the District Judge setting aside the judgment of the Rural Court. The petitioner is entitled to the costs of this application.

WEERASOORIYA, J.—I agree.

Order quashed.

¹ (1952) 1 All E.R. 122.