

1957 Present : Basnayake, C.J., and L. W. de Silva, A.J.

N. SELLATHANGAM, Appellant, and A. ASSANARLEBBE
and another, Respondents

S. C. 651—D. C. Batticaloa, 1128/L

Land Development Ordinance—Contravention of Section 42—Effect—Section 71.

Where a grantee of land under the Land Development Ordinance transfers the land to a person without obtaining the prior written consent of the Government Agent as required by section 42, the transfer is null and void and does not have the effect of passing any right or title to the transferee. In such a case, the succession devolves according to the rules in the Third Schedule.

APPEAL from a judgment of the District Court, Batticaloa.

C. Renganathan, with P. Naguleswaram, for Plaintiff-Appellant.

A. H. C. de Silva, Q.C., with J. N. David, for Defendants-Respondents.

July 25, 1957. BASNAYAKE, C.J.—

This is an action instituted by one N. Sellathangam, widow of Murugapper Kanapathipillai, in which she declares that she is the successor of her late husband to two allotments of land described in the schedule to the plaint and granted to her husband under the Land Development Ordinance. By two deeds Nos. 362 and 363 of 14th March 1949 and attested by V. K. Arulampalam, Notary Public, her late husband had transferred these two allotments of land to the defendants without obtaining the prior written consent of the Government Agent as required by section 42 of the Land Development Ordinance. The learned trial Judge dismissed the plaintiff's action on the ground that the plaintiff was not entitled to the lands described in the schedule to the plaint by virtue of the operation of section 71 of the Land Development Ordinance, but he does not seem to have taken into account the fact that where a life-holder is not nominated the succession devolves according to the rules in the Third Schedule. The first of such rules reads as follows :—

“Where, on the death of the owner, no successor or life-holder succeeds to the holding, the title thereto shall devolve on the surviving spouse of such deceased owner and, failing such spouse, on one only of the relatives of such owner in the order of priority in which they are respectively mentioned in the subjoined table, the older being preferred to the younger where there are more relatives than one in any group.

Table

1. Sons.	7. Brothers.
2. Daughters.	8. Sisters.
3. Grandsons.	9. Uncles.
4. Granddaughters.	10. Aunts.
5. Father.	11. Nephews.
6. Mother.	12. Nieces.

In this rule, 'relative' means a relative by blood and not by marriage."

It is clear that the deeds on which the defendants rely have been executed in contravention of section 42 of the Land Development Ordinance. That section declares that "no disposition of a protected holding shall be effected except with the prior written consent of the Government Agent." The prohibition imposed by the section is absolute and any act done in contravention thereof is null and void. The deeds have been executed without the consent of the Government Agent. The learned trial Judge is therefore wrong in holding that the plaintiff is not entitled to the lands claimed by her, and his judgment must be set aside. The deeds executed by the deceased, being null and void, do not have the effect of passing any right or title to the lands dealt with therein.

We accordingly direct that decree be entered for the plaintiff as prayed for in her plaint.

The appellant is entitled to costs both here and in the court below.

L. W. DE SILVA, A.J.—I agree.

Appeal allowed.
