

1968

Present : de Kretser, J.

KALUWA, Appellant, and CHULARATNE SILVA, Respondent

*S. C. 140/67—C. R. Matale, 15178*

*Paddy Lands Act, as amended by Act No. 11 of 1964—Section 8 (2)—Cession of rights by ande cultivator—Omission to obtain Commissioner's written sanction—Effect when the transferor continues to work on the field as paid labourer.*

Where an ande cultivator of a paddy land surrenders his ande rights to his landlord without obtaining the written sanction of the Commissioner as required by section 8 (2) of the Paddy Lands Act, and thereafter works on the field as a paid labourer of the landlord, he is not entitled to claim an ande share for the period during which he worked as paid labourer.

**A**PPEAL from a judgment of the Court of Requests, Colombo.

*S. K. Sangakara, with Asoka de Z. Gunawardena, for Plaintiff-Appellant.*

*T. B. Dissanayake, with Nalin Abeysekeru, for Defendant-Respondent.*

October 11, 1968. DE KRETSEK, J.—

The facts are as follows :—

Plaintiff sues the defendant for damages in Rs. 750. His case is that he was the ande cultivator of the defendant in respect of the field called Hembanile Kumbura and as such cultivated for the Maha season. He alleges that on 17.3.66 the defendant forcibly removed the crop of the entire field. He says his share would be 60 bushels of paddy valued at Rs. 720 and 900 bundles of straw valued at Rs. 30.

Defendant's case is that the plaintiff who had been an de cultivator of the field from 1956 was as from 3.3.65 only a paid labourer and therefore not entitled to any share. His evidence is that he had asked plaintiff to redeem mortgage bond 28009 of 9.10.55 as he feared the bond would be prescribed by 1965 and plaintiff got displeased and voluntarily surrendered the field together with his an de rights on document D1 of 3.3.65.

Plaintiff's position is that he signed D1 under duress.

The Trial Judge (Mr. Ladduwahetty) found that by D1 the Plaintiff surrendered of his own free will the field in dispute to the defendant together with plaintiff's an de rights. I am satisfied that that finding of fact is correct. The plaintiff has appealed and his Counsel has invited my attention to sub-section 2 of section 9 of the Paddy Lands (Amendment) Act 11 of 1964, which states "a tenant-cultivator of any extent of paddy land may, with the written sanction of the commissioner given after such inquiries as the commissioner may deem necessary cede his rights in respect of such extent to his landlord if such landlord is also the owner of such extent. *Any cession of such rights made without the written sanction of the commissioner shall be null and void.*"

It follows that the cession of rights on D1 was null and void as it was made without the written sanction of the commissioner, and if the plaintiff continued to cultivate the field ignoring the fact that he had given the writing D1 he could correctly claim in spite of D1 that he was the an de cultivator and claim his share. For the very good reason that he was apparently in blissful ignorance of sub-section 2 of section 9 of 11 of 64, he did not do that for the trial judge finds that after he gave the document D1 the plaintiff worked as *the paid labourer* of the defendant because plaintiff thought it would be a "disgrace" not to be associated with the field he had been cultivating since 1965.

Once he has accepted payment for his labour he cannot be allowed to claim an an de share and I therefore dismiss his appeal. He has the consolation of knowing that in spite of D1 he continues to be the an de cultivator of the field. I make no order as to costs.

*Appeal dismissed.*

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