IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA.

Wijesuriya Hatagala Gamage Karalenchihamy,
Malpettawa, Ambalantota.

Plaintiff.

Vs.

CA 889/2000 (F)

DC Hambantota No. 893/L

Saranasinghe Patabandige Justin,
Karagas Ara, Kuda Bolana,
Ambalantota.

Defendant.

AND NOW BETWEEN

Wijesuriya Hatagala Gamage Karalenchihamy,
(Deceased)

Original Plaintiff.

Saranasinghe Patabandige Jaytissa,
Puhulyaya Road,
Ambalantota.

Substituted Plaintiff-Appellant.

Vs.

Saranasinghe Patabandige Justin,
Karagas Ara, Kuda Bolana,
Ambalantota.

Defendant-Respondent.

Before:	**Prasantha De Silva, J.**
	K.K.A.V. Swarnadhipathi, J.
Counsel:	Rohan Sahabandu PC with Nathasha Fernando A.A.L for the
Substituted	Plaintiff- Appellant.
	Erusha Kalidasa A.A.L with Thilini Sithumini A.A.L for the
	Substituted Defendant-Respondent.
Written Submissions	16.11.2021 by the Substituted Plaintiff- Appellant.
tendered on:	29.11.2021 by the Substituted Defendant-Respondent.
Argued on:	15.11.2021
Decided on:	06.01.2022

Prasantha De Silva, J.

Judgment

This appeal emanates from the Judgment of the District Court of Hambantota dated 31.07.2000 in Case bearing No. 893/L.

It appears that the Plaintiff instituted action against the Defendant seeking to get a declaration that Plaintiff is entitled to the possession of the subject land and to quit possession and for the eviction of the Defendant from the said subject matter described in the schedule to the Plaint.

The Defendant has taken up the position in his answer that;

a) He is the ande cultivator of the paddy land in question and therefore, the Court has no Jurisdiction to hear and determine the Case.
b) The Plaintiff is estopped from denying that he is the ande cultivator of this disputed paddy land as Plaintiff has accepted the Praveniya from him incidentally, who accepted the mother as the landlord.

At the trial, Plaintiff raised 01-06 issues and on behalf of the Defendant, 07, 08, 09 issues were raised. It is seen that the Plaintiff's 1st and 2nd issues are based on the fact that William Singho is the Permit holder and the Plaintiff is the successor, thus the Plaintiff based her issues on title.

The Defendant raised issue No.07 on the basis that he is the ande cultivator and issue No. 08 and 09 were related to the question whether, "if so, the District Court has jurisdiction to hear and determine the Case to entertain this action".

The Court decided to try issues No. 07, 08 and 09 as preliminary issues and on behalf of the Plaintiff, the Plaintiff and one of his sons adduced evidence and closed their Case marking documents P_1-P_7 in evidence, while, the Defendant, a sister of the Defendant and a neighbour gave evidence and marked and produced documents D_1-D_3.

After the conclusion of the trial, the learned District Court Judge delivered the Judgment in favour of the Defendant answering issues No. 07, 08 and 09 in the affirmative.

In view of the said Judgment, it was submitted by the Defendant that the learned District Judge in his Judgment held that;

I. In terms of Section 2(1) of the Agrarian Services Act, letting can be oral.
II. A son can be the tenant cultivator for the father.
III. Court has no jurisdiction to go into the matter as the Court holds that Justin is the ande cultivator.
IV. There is proof that, Justin did give the Praveniya to his mother and his siblings as the ande cultivator of the field.
V. Court accepts Defendant's sister's evidence.
VI. He has already made an application to the Agricultural Tribunal to register his name as the ande cultivator of the Plaintiff.
VII. Justin has performed all ingredients in Section 68 of the Act to qualify himself as a tenant cultivator.

It was argued on behalf of the Appellant that whether the District Court has jurisdiction to determine the status of the Defendant, whether he is an ande cultivator within the purview of the Agrarian Services Act.

It is seen that the Counsel for the Defendant relied upon the decision of ***Hendrick Appuhamy Vs. John Appuhamy [69 NLR 29]*** where his Lordship *Sansoni J.* held, that a landlord must resort to the Agrarian Commissioner to eject an ande cultivator from his paddy land and therefore, the District Court has no jurisdiction to decide that the Defendant is an ande cultivator.

In the circumstances of the said Case, parties admitted that the Plaintiff is the owner and the Defendant is the ande cultivator. In such a situation, the District Court has no jurisdiction to inquire into any dispute relating to the paddy land.

Nevertheless, in the instant Case, parties have disputed their status. Although the Defendant claims that he is the ande cultivator, the Plaintiff instituted this action on the basis that the Defendant is a trespasser. As such, it is clear that the dispute has arisen as to the status of the parties.

The said legal position was clearly established in the Case of ***Herath Vs. Peter 1989 (2) S.L.R 325*** and ***Kirihamy and Punchi Banda Vs. Siriwardena and Others 2002 (2) S.L.R 281.***

Therefore, on this premise the Court has to first decide, whether the Defendant is a trespasser or an ande cultivator. I hold that the District Court has jurisdiction to hear and determine the instant action.

Apparently, the subject matter of the instant action is a paddy land. The Plaintiff's husband, William Singho was the Permit holder of the subject matter in terms of the Land Development Ordinance and he nominated his wife Karalenchihamy the Plaintiff as his successor, according to the document marked as [P_1].

As such, in view of the Judgment reported in ***50 N.L.R 407 Palisena Vs. Perera***, a permit holder has a right to institute action to evict a trespasser from the disputed land. It is the contention of the Appellant that the said William Singho cultivated the subject land [the paddy field] as the owner cultivator and after his demise, his wife the said Karalenchihamy, the Plaintiff, became the owner cultivator of the impugned paddy field, in terms of Section 48A (1) of the Land Development Ordinance.

It is in evidence that the Plaintiff mother and her husband the said William Singho being owner cultivators, had been cultivating the field along with their children including the Defendant.

Since the learned District Judge is of the view that 'letting' can be oral, in the absence of a written agreement, the Defendant has to prove whether the paddy land has been 'let' to him on an oral agreement.

In this respect, one has to look at the circumstances of the Case, the available evidence and the applicability of the relevant provisions of Law.

It is worthy to note that Section 2 of the Agrarian Services Act states,
Where "any person" is a cultivator of any extent of paddy land **let** to him under any oral or written agreement then, if he is a citizen of Sri Lanka, he shall, subject to the provisions of this Act, be a tenant cultivator of that extent.

The word "let" contained in Section 2 of the Act, is defined in Section 68 as follows;
"let" with reference to any extent of paddy land, means to permit any person, under an oral or written agreement, to occupy and use such extent in consideration of the performance of any service by him or the payment of rent consisting of a sum of money or a share of the produce from such extent.

Apparently, the position taken up by the Appellant that, since the Defendant is the son of the original owner cultivator [William], the Defendant cannot be a tenant cultivator of the father.

Similar issue was discussed in the Case of ***Dassanayake Musiyanselage Appuhamy Vs. Pathiraja Mudiyanselage Lisen Banda [S.C Appeal No. 74/85- S.C Minutes 19.12.1986],*** where the son who was working the field with his father took up the position that, he was the ande cultivator of the father.

In this Case *Athukorale J.* opined that; "It seem to me be inherently improbable that the son would have been his own father's tenant cultivator. Such position is contrary to the entries in the registers where his father appears as the owner cultivator".
In that Case too, the Supreme Court held that there is no iota of evidence, to come to the conclusion that he was the tenant cultivator thus the presumption under Section 45 applies.

It was the contention of the Defendant-Respondent that the Plaintiff mother is the owner and the Defendant is the ande cultivator from 1970. Apparently, the witness of the Defendant said in evidence, "when the father was alive, the Defendant worked with the father". Similarly, the sister of the Defendant stated in re-examination, that the Defendant had cultivated the paddy land in question and continued upon the death of their father the said William Singho. It appears that the said witness corroborated the evidence of the Defendant and Defendant's witness to the fact that the Defendant worked in the paddy field with his father and cultivated the same. Nevertheless, it was not substantiated that the Defendant had been working in the Paddy Land in question in the capacity of an ande cultivator.

It was submitted on behalf of the Plaintiff-Appellant that in terms of the Agrarian Services Act, every Agrarian Services Committee maintains a register under Section 45 (1) of the Act.

The first registration in respect of agricultural land is prepared and certified by the Commissioner according to Section 45 (1) [Proviso] of the Act.

The register gives the name and extent of the paddy land, the name of the landlord and ande cultivator or owner cultivator, as the case may be, and such other particulars as may be required as provided in Section 45 (2) of the Act.

In Section 45 (3), it stipulates that such an entry is prima facie evidence of the facts stated therein. Apparently, Section 45 (4) lays down that regulations could be made,

- in respect of the procedure to be followed in the preparation and revision of the register;
- to have his name registered if the ande cultivator's name is not registered;
- to have a name removed in such register;

- procedure to be followed in determination of claims; and
- the procedure for appeals.

It is worthy to note that the paddy land register for the years 1978 [P_2] and 1983 [P_3] indicates that William Singho and Karalenchihamy the Plaintiff as owner cultivators. Apparently the said paddy land register does not indicate the Defendant's name as the ande cultivator. As such, it is prima facie evidence under Section 45 (2) of the said Act that Plaintiff the said Karalenchihamy is the owner cultivator and there is no proof to substantiate that the Defendant is the ande cultivator of the paddy land in question.

One Dharmadasa from the Agrarian Services Department was called by the Defendant to adduce evidence. He said in evidence that, if the name is not registered as an ande cultivator, he could not be accepted as ande cultivator in terms of the Agrarian Services Act. Karalenchihamy the Plaintiff is the owner cultivator and even if a person works as an ande cultivator and if his name is not registered after 1978, he cannot be the ande cultivator.

It is in evidence that, Justin made an application [වි$_2$/ වි$_3$] on 26.01.1985 to get his name entered in the paddy lands register but no inquiry has been held, since the instant action is pending in Court. It was his position that if he could prove that he is an ande cultivator, his name can be registered in the paddy lands register as an ande cultivator. It was brought to the notice of Court that in the Defendant's said application [වි$_2$/ වි$_3$], Karalenchihamy's name was indicated as the owner cultivator by the Defendant, which appears to be a contradiction to the contention of the Defendant.

It is evident that the Plaintiff has become the owner cultivator after the demise of her husband, the original owner cultivator, the said William Singho in 1983. This was indicated in the paddy land register for the year 1983 marked as ජැ3 and produced in evidence.

Apparently, the Defendant has made an application [වි$_2$] to enter his name as the ande cultivator on 11.09.1986. It is seen that in document [වි$_3$] the Plaintiff's name is indicated as the owner cultivator in the paddy land register for the year 1983.

Since the Plaintiff instituted the instant action on 23.04.1985, it appears that the Defendant had made the application to amend the paddy land register and included his name as the ande cultivator in 1986, thus, apparently after the institution of the instant action.

It is in evidence that the said William Singho, father of the Defendant and husband of the Plaintiff, was the owner cultivator and the said William Singho cultivated the subject paddy land with the members of the family.

After the demise of the said William Singho, the Plaintiff has succeeded to the rights of her husband legally and continued cultivating the subject matter as the owner cultivator through her children.

On this premise, Court's attention was drawn to Section 68 of the Act which defines "Cultivator" with reference to an extent of paddy land, means any person, other than an Agrarian Services Committee, who by himself or by any member of his family, or jointly with any other person, carries out on such extent;
(a) two or more of the operations of ploughing, sowing and reaping; and
(b) the operation of tending or watching the crop in each season during which paddy is cultivated on such extent.

Thus, it is apparent that no qualification imposed in Section 2 and Section 68 of the said Act, interprets tenant cultivator.

As such, the Defendant has to prove the requirements, he should fulfil in order to be a tenant cultivator.

The attention of Court was drawn to the evidence placed before the learned District Judge. It appears that the Plaintiff said in evidence that,
ප්‍ර : ජස්ටින් ට මේ කුඹුරේ අක්කරයක් වැඩ කරන්න කියලා තමන් කිව්වද?
උ : ඔව් මම ඒ කාලේ කිව්වා.
ප්‍ර : විත්තිකරුට කිව්වේ එක අක්කරයක් වැඩ කරගෙන අනික් ඒවා අනික් අයට දෙන්න කියලද?.

උ : අක්කර හතර, හතර දෙනාටම බෙදාගෙන කන්න කියලා මම කිව්වා. මටත් ටිකක් දීලා, මට දෙන දීමනාවෙන්, වී අමුණුදෙක දෙක දූලා දෙන්නටත් දෙන්න කියලා මම කිව්වා.මම මැරුණත් ඒ දෙන දීමනාව දීපන් කියලා මම කිව්වා. මට ගෙනවිත් දෙන ඒ වී වලින් මම දෙන්නම්ය කියලා මම කිව්වා.

The Defendant said in evidence that, මා කරන ලද අක්කර දෙක වෙනුවට තාත්තට මම ප්‍රවේණිය වශයෙන් වී අමුණු නමයක් ගෙනැවිත් දුන්නා. තාත්තා ජීවතුන් අතර සිටින තුරු මේ හැටියට ගොවිතැන් කරගෙන ආවා. ඊට පසු තාත්තා මියගිය අවස්තාවේ වෙනසක් උනා. මට කිව්වා වී අමුණු දාහතරක් දෙන්න කියලා. අමුණු දෙක දෙක නංගිලා දෙන්නාටත් දෙන්න කිව්වා. අමුණු දහයක් අම්මට දෙන්න කිව්වා. එහෙම කිව්වේ අම්මා.

According to the said evidence, it is pertinent to note that the Defendant had cultivated the land and given produce to his parents and siblings on the request of the father, the said William Singho and the Plaintiff, mother of the Defendant on their leave and license.

It is relevant to note the evidence of the Defendant's witness Henry Gamhewa,
ප්‍ර : තමා ගරු අධිකරණයට කියන්නෙ 1985 අවුරුද්දේ කරලෙන්විනාහාමි කියන අය හා ජස්ටින් අතරේ ආරවුලක් තිබුණු බව තමාට ආරන්චි වුනා කියා?
උ : ඔව්.
ප්‍ර : මොකක් සම්බන්ධවද?
උ : ජස්ටින්ට කුඹුර වැඩ කරන්න දෙන්නේ නැහැ කියා මට ඇවිත් කීවා. මවු ආරවුල් කරනවා කියා කීවා. මගෙන් ලිපියක් ඉල්ලුවා ඔහු 70 සිට කුඹුර වගා කලා කියා. මම ලිපියක් දුන්නා වගා කලා කියා. මම ලිපිය දුන්නේ වගා කලා කියලා විතරයි.

According to the evidence of the said witness, it was established that the Defendant cultivated the field without any dispute until 1985. Nevertheless, it does not prove that the Defendant cultivated the paddy field in question in the capacity of an ande cultivator.

The other sisters were paid on the request of mother. Mother has requested to give a share to sisters. That share is deemed to be paid to mother.
ප්‍ර : විත්තිකරුට කිව්වේ එක අක්කරයක් වැඩ කරගෙන අනිත් ඒවා අනිත් අයට දෙන්න කියලද?

උ : අක්කර හතර, හතර දෙනාටම බෙදාගෙන කන්න කියලා මම කිව්වා. මටත් ටිකක් දීලා, මට දෙන දීමනාවෙන්, වී අමුණු දෙක දෙක දුවලා දෙන්නටත් දෙන්න කියලා මම කිව්වා. මම මැරුණත් ඒ දෙන දීමනාව දීපන් කියලා මම කිව්වා. මට ගෙනැවිත් දෙන වී වලින් මම දෙන්නම්ය කියලා මම කිව්වා.
ප්‍ර : කොයි කාලයේද තමන් කිව්වේ " මට දෙන දීමනාවෙන් අමුණු දෙක බැගින් දෙන්න කියලා".
උ : නඩුවේ මුල් ස්ටාට් එකේදීම මම එහෙම කිව්වා. හම්බන්තොටදී කිව්වේ.

මා කරන ලද අක්කර දෙක වෙනුවෙන් තාත්තාට මම ප්‍රවේණිය වශයෙන් වී අමුණු නමයක් ගෙනැවිත් දුන්නා. තාත්තා ජීවතුන් අතර සිටින තුරු මේ හැටියට ගොවිතැන් කරගෙන ආවා. ඊට පසුව තාත්තා මියගිය අවස්ථාවේ වෙනසක් වුනා. මට කිව්වා වී අමුණු දා හතරක් දෙන්න කියලා. අමුණු දෙක දෙක නංගිලා දෙන්නටත් දෙන්න කිවුවා. අමුණු දහයක් අම්මට දෙන්න කිවුවා. එහෙම කීවේ අම්මා. 18.01.1983 දිනට පසුව වී අමුණු දහයක් අම්මට දුන්නා. මේබල්ට සහ මර්සිට වී අමුණු දෙක බැගින් අමුණු හතරක් දුන්නා. තාත්තා ජීවත්ව සිටින කාලයේදී මම නංගිලා දෙන්නගේ කොටස දුන්නේ නැහැ. තාත්තා දුන්නද කියන්න දන්නේ නැහැ.
මම තාත්තාගේ මරණයෙන් පසුව නංගිලාට දුන්නා. ඒ අම්මාගේ කීම පිට.

According to the evidence of the Defendant, the Defendant was cultivating the paddy land with his father since his father got the paddy land in 1933. It was the position of the Defendant that after 1970, he cultivated the land on his own and had given the Praveniya to his father and became the ande cultivator.

Even after the demise of his father, the Defendant cultivated the paddy land in dispute with the consent of his mother the Plaintiff and had given the Praveniya to his mother and other siblings.

The learned President's Counsel for the Appellant's main contention was that the learned District Judge had come to a wrong finding for the reason that no adequate weightage had been given to the documentary evidence produced on behalf of the Plaintiff-Appellant. Thus the learned District Judge had not come to the correct findings of fact and Law, thereby had come to a wrong conclusion and held against the Plaintiff-Appellant.

Although the Defendant-Respondent said in evidence that from 1970 onwards, he cultivated the paddy land on his own, if that is so, it is questionable why he did not make an application to register

him as the ande cultivator not even before the demise of his father William Singho in 1983. Since the Plaintiff-Appellant being the successor of the original owner cultivator, the said William Singho, Plaintiff-Appellant became the owner cultivator of the paddy land in question, and registered her name as the owner cultivator in 1983. Apparently, even at that time, the Defendant-Respondent had not taken any interest to register himself as the ande cultivator if he cultivated the field as ande cultivator. On the other hand if the parents of the Defendant intended to give ande rights to the Defendant, they themselves should have taken steps to register themselves as landlord and the Defendant as the ande cultivator.

As such, it amply proves that the Defendant had not cultivated the paddy land in dispute in the capacity of an ande cultivator and it is apparent that the Defendant-Respondent cultivated the paddy land with the consent of his parents, the said William Singho and the Plaintiff-Appellant on behalf of the family.

It is evident that the Plaintiff too requested and consented for the Defendant-Respondent to cultivate the said paddy land on behalf of her family. According to the evidence placed before the learned District Judge, it amply proves that the Plaintiff-Appellant being the owner cultivator had given leave and license to the Defendant-Respondent to cultivate the paddy land in question. Hence, it clearly shows that the Defendant-Respondent is not an ande cultivator but a licensee of the Plaintiff-Appellant in view of the aforesaid situation.

Apparently, Plaintiff instituted the instant action against the Defendant, her son on the basis that since she did not '**let'** the field to the Defendant to cultivate as an ande cultivator, hence, her rights were disputed and obstructed by the Defendant.

The evidence adduced by the Defendant-Respondent should have been taken into consideration by the learned District Judge in assessing the credibility of the Defendant-Respondent's version that he cultivated the paddy land not as an ande cultivator but also a licensee of the Plaintiff-Appellant.

It is relevant to note that the Defendant-Respondent adduced no documentary proof whatsoever to show that he cultivated the paddy land as an ande cultivator from 1970 onwards, until the

institution of the instant action on 27.04.1985. Apparently, the Defendant-Respondent had made an application to register his name as the ande cultivator in the paddy land register in 29.01.1986, just after the institution of the instant action by the Plaintiff-Appellant.

According to the evidence placed before Court, it is observable that the learned District Judge has failed to appreciate that the Defendant has cultivated the paddy land in dispute on the instructions of the father William Singho and the mother the Plaintiff in the capacity of a licensee.

In view of the foregoing reasons, I hold that the learned District Judge has come to an erroneous conclusion and held against the Plaintiff-Appellant. Thus, we set aside the Judgement dated 31.07.2000 and allow the appeal of the Plaintiff-Appellant.

In this instance, Court observes that the learned District Judge has tried issues No 7, 8 and 9 as preliminary issues and answered in the affirmative and not answered the other issues.

Apparently, both the Plaintiff and the Defendant had called witness and adduced evidence and concluded the trial fully. Therefore, the learned District Judge ought to have answered all the issues.

Since the instant action was instituted in 1985 and the appeal was preferred in the year 2000, we see no point of sending this Case back to the District Court of Hambantota for the purpose of answering the issues raised in the instant action on the available evidence.

Therefore, we answer the issues as follows;

1. එසේය.
2. එසේය.
3. එසේය.
4. ඔප්පු කර නැත.
5. ඔප්පු කර නැත.
6. පැමිණිල්ලේ (I) හා (II) යන ආයාචනයන්හි අයැද ඇති සහන ලබා ගැනීමට, පැමිණිලිකාරියට හිමිකමක් ඇත.

1. Yes.
2. Yes.
3. Yes.
4. Not proved.
5. Not proved.
6. Plaintiff is entitled to the relief prayed in prayer (I) and (II) of the plaint.

The Plaintiff and the Defendant have to bear their own costs of litigation.

JUDGE OF THE COURT OF APPEAL

K.K.A.V. Swarnadhipathi, J.

I agree.

JUDGE OF THE COURT OF APPEAL