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**MUNASINGHE AND OTHERS****Vs.****PRABHATH KUMARA**

COURT OF APPEAL  
WICKREMASINGHE, J.  
SAMAYAWARDHENA, J.  
CA/PHC/47/2010  
HC HAMBANTOTA HCRA/8/2009/REV  
MC TISSAMAHARAMA 88886

**Primary Courts' Procedure Act, No. 44 of 1979, sections 66(1)(b), 68(3), 75— Agrarian Development Act, No. 46 of 2000, section 98— Applicability of section 66 to state lands and paddy lands—Inherent powers to make orders to maintain the status quo**

The petitioners filed an application in the Magistrate's Court under section 66(1)(b) of the Primary Courts' Procedure Act, No. 44 of 1979, seeking restoration of possession of the land in suit in terms of section 68(3) of the Act on the basis that they were forcibly dispossessed from the land by the respondent within the two months prior to the filing of the application. After inquiry, the Magistrate's Court held with the petitioners, but the High Court set aside the order of the Magistrate's Court on the basis that the disputed land is a paddy land and also a state land and therefore the Magistrate's Court had no jurisdiction to inquire into this dispute under section 66 of the Primary Courts' Procedure Act and the dispute ought to have been dealt with under the provisions of the Agrarian Development Act, No. 46 of 2000. The petitioner appealed to the Court of Appeal.

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**Held:**

1. If the dispute is a land dispute, as defined in section 75 of the Primary Courts' Procedure Act, as a result of which there is an imminent threat to the breach of the peace, irrespective of whether the land is a state land or private land, the court is clothed with jurisdiction to make a provisional order in terms of section 68 or 69 of the Act with the sole objective of preventing a breach of the peace until the substantive rights of the parties are decided by the District Court.
2. The finding of the High Court that as the dispute relates to a paddy land, the dispute shall be resolved under the mechanism provided in the Agrarian Development Act, No. 46 of 2000, and not under section 66 of the Primary Courts' Procedure Act, is bad in law.
3. The general principle that where a statute creates a right and in plain language gives a specific remedy or appoints a specific tribunal for its enforcement, a party seeking to enforce the right must resort to that tribunal and not to others, is embodied in section 98 of the Agrarian Development Act.
4. Nevertheless, the Agrarian Development Act does not oust the jurisdiction of the Magistrate's Court exercisable under section 66 of the Primary Courts' Procedure Act, merely because the dispute relates to paddy land. The jurisdiction of the Magistrate's Court is ousted if, and only if, the two contesting parties in the first place accept a relationship of landlord and tenant cultivator between them. If one party denies such a relationship, the court has the jurisdiction to determine the matter.
5. If one party to the application is a tenant cultivator, the court does not lack jurisdiction if the disputing party is not his landlord but an outsider.
6. Given the intention of the legislature in enacting section 66 of the Primary Courts' Procedure Act, in the event the court decides that it has no jurisdiction due to the acceptance of the relationship of landlord and tenant cultivator, still, the court has inherent jurisdiction to make a suitable order to maintain the status quo until the parties seek relief under the provisions of the Agrarian Development Act.

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7. The petitioners have filed the application under section 66(1)(b) as a private plaint two months after dispossession. Hence no relief under section 68(3) can be granted in favour of the petitioners.

**Cases referred to:**

1. Mansoorv. OIC Avissawella [1991] 2 Sri LR 75
2. Hearth v. Peter [1989] 2 Sri LR 325

APPEAL from the Judgment of the High Court of Hambantota.

Lakshman Perera, P. C., with Anjali Amarasinghe for the Appellant.

Nimal Muthukumarana for the Respondent.

*cur. adv. vult.*

July 18, 2019

**SAMAYAWARDHENA, J.**

The Petitioners filed this application in the Magistrate's Court on 30. 06. 2008 against the Respondent under section 66(1)(b) of the Primary Courts' Procedure Act, No. 44 of 1979, seeking restoration of possession of the land in suit in terms of section 68(3) of the Act on the basis that they were forcibly dispossessed from the land by the Respondent within two months prior to the filing of the application. The Respondent in his counter affidavit resisted the application of the Petitioners on the basis that the dispossession took place outside the period of two months. After inquiry, the learned Magistrate by order dated 10. 02. 2009 held with the Petitioners. Being aggrieved by that order, the Respondent went before the High Court and the High Court by Judgment dated 23. 03. 2010 set aside the order of the Magistrate's Court. This appeal by the Petitioners is against the Judgment of the High Court.

The High Court set aside the Magistrate's Court order on the basis that the disputed land is a paddy land and also a state land, and therefore the Magistrate's Court has no jurisdiction to inquire into this dispute under section 66 of the Primary Courts' Procedure Act. The High Court has taken up the position that the dispute shall be dealt with under the provisions of the Agrarian Development Act, No. 46 of 2000. I have no hesitation in stating that the learned High Court Judge has manifestly misdirected himself in law on jurisdiction.

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It is erroneous to conclude that invocation of section 66 of the Primary Courts' Procedure Act can only be done provided the dispute relates to a private land as opposed to a state land. If the dispute is a land dispute as defined in section 75 of the Act, as a result of which there is an imminent threat of a breach of the peace, irrespective of whether the land is a state land or a private land, the Court is clothed with jurisdiction to make a provisional order in accordance with the law with the sole objective of preventing the breach of the peace until the substantive rights of the parties are decided by the District Court.

The finding of the learned High Court Judge that, as the dispute relates to a paddy land, the dispute shall be resolved under the mechanism provided in the Agrarian Development Act, No. 46 of 2000, as amended, and not under section 66 of the Primary Courts' Procedure Act, is also bad in law.

*Mansoor v. OIC Avissawella*,<sup>1</sup> which the learned High Court Judge heavily relies on is based on the well-established general principle: “Where a statute creates a right and, in plain language, gives a specific remedy or appoints a specific tribunal for its enforcement, a party seeking to enforce the right must resort to that tribunal and not to others.”

The Agrarian Development Act is a special Act passed, as the long title of the Act suggests, predominantly, to “provide for matters relating to landlords and tenant cultivators of paddy lands”. Hence the jurisdiction of the ordinary courts to entertain and determine such disputes is ousted. Section 98 of the Agrarian Development Act enacts:

*The provisions of this Act shall have effect notwithstanding anything to the contrary in any other written law, and accordingly, in the event of any conflict or inconsistency between the provisions of this Act and such other law, the provisions of this Act shall prevail.*

However, the Agrarian Development Act does not oust the jurisdiction of the Magistrates' Courts exercisable under section 66 of the Primary Courts' Procedure Act merely because the dispute relates to a paddy land. For the former Act to be applicable, and if the jurisdiction of the Magistrate's Court is to be ousted, there shall be a landlord and tenant cultivator relationship between the two contending parties. In the case at hand, there is absolutely no landlord and tenant cultivator relationship between the Petitioners and the Respondent and therefore the Magistrate's Court has jurisdiction to entertain and determine this dispute.

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Further, one party in a section 66 application can claim to be a tenant cultivator. It is a mistake to think that the moment such a claim is made, the jurisdiction of the Magistrate's Court is instantly ousted. The jurisdiction of the Magistrate's Court is ousted, if, and only if, the two contesting parties in the first place accept a relationship of landlord and tenant cultivator between them. If one party denies it, the Court has jurisdiction to determine the matter. In *Hearth v. Peter*<sup>2</sup> it was held:

*Any dispute in respect of a paddy field arising between a landlord and a tenant would have to be determined in the manner provided for in the Agrarian Services Act, and cannot be brought before a Court of Law. However, the above principle will apply, only where each party admits the status claimed by the other, i. e. of landlord and tenant. The jurisdiction of the Court is not ousted where the status is denied.*

I might also add that merely because one party to the section 66 application is admittedly a tenant cultivator, the Court does not lack jurisdiction if the disputing party is not his landlord but an outsider.

For completeness let me also state that (given the intention of the legislature in enacting section 66 of the Primary Courts' Procedure Act), in the event the Court decides that it has no jurisdiction due to the relationship of landlord and tenant cultivator being accepted, still the Court has inherent jurisdiction to make a suitable order to maintain the *status quo* until the parties seek relief under the provisions of the Agrarian Development Act.

Learned counsel for the Respondent in his short written submission states that the Petitioners instituted the action after two months of the alleged dispossession. This appears to be correct. The Petitioners filed the case in the Magistrate's Court on 30. 06. 2008. According to the first complaint made to the police by the first Petitioner on 28. 04. 2008, the Petitioners have been forcibly dispossessed from the land by the Respondent on that day, i. e. 28. 04. 2008. In that complaint the first Petitioner has stated that the Respondent together with about 20 people was ploughing the paddy field which she had been cultivating since 1992. This complaint has completely escaped the attention of the learned Magistrate. As seen from the complaint of the first Petitioner made to the police on 07. 05. 2008, the Respondent has continued ploughing on 07. 05. 2008 as well. Thereafter, as seen from the next complaint of the first Petitioner made to the police

on 21. 05. 2008, the Respondent has sowed paddy in the paddy land on 20. 05. 2008. It is very unfortunate that the police did not report the matter to the Magistrate's Court under section 66 of the Primary Courts' Procedure Act soon after the first complaint was made or at any time thereafter. The Petitioners have filed the action under section 66(1)(b) as a private plaint two months after the said dispossession. Hence no relief under section 68(3) can be granted in favour of the Petitioners.

Although I do not agree with the reasoning of the High Court Judge, I am compelled to agree with the conclusion. The appeal is dismissed without costs.

**WICKREMASINGHE, J.** - *I agree.*

*Appeal dismissed.*

*Judgment by: Mahinda Samayawardhena, J.*

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