

1968 *Present*: H. N. G. Fernando, C.J., and Wijayatilake, J.

DODANWELA, Appellant, *and* BANDIYA, Respondent

S.C. 309/65 (F)—D. C. Kurunegala, 597/L

*Paddy Lands Act, No. 1 of 1958—Section 63—Meaning of term “cultivator”—
Burden of proof.*

Where, in an action for declaration of title and ejection in respect of a land, the defendant pleads that the land is a paddy land and that he, being the cultivator of it as tenant under the plaintiff, cannot be ejected by reason of the provisions of the Paddy Lands Act, the burden is on the defendant to prove that he did not employ hired labour for the work specified in paragraph (b) of the definition of “cultivator” in section 63 of the Paddy Lands Act and that he did not employ hired labour for at least two of the operations mentioned in paragraph (a) of the definition.

APPEAL from a judgment of the District Court, Kurunegala.

C. R. Gunaratne, for the plaintiff-appellant.

D. R. P. Goonetilleke, with *Chulpathmendra Dahanayake*, for the defendant-respondent.

September 27, 1968. H. N. G. FERNANDO, C.J.—

The plaintiff sued the defendant for declaration of title and ejection in respect of two lands specified in the schedule to the plaint. The defendant pleaded that the lands were paddy lands and that he was the cultivator of the lands as tenant under the plaintiff and that he could not be ejected by reason of the provisions of the Paddy Lands Act. The learned Judge was satisfied that the defendant did not himself cultivate land No. 2 and in respect of that land entered judgment for the plaintiff.

In the case of land No. 1 however the learned Judge has held in favour of the defendant. It would appear that the learned Trial Judge based his decision upon a consideration of the question whether the defendant had worked or cultivated the field or in other words had been generally responsible for the cultivation. In regard to land No. 1, the Judge was satisfied that the defendant had passed that test.

The definition of 'cultivator' in Section 63 of the Paddy Lands Act refers however to a somewhat different matter, namely, the question whether the tenant by himself or by any member of his family, and without the employment of hired labour, carries out the major part of the actual work of cultivation. A burden lay on the defendant in this case to satisfy the Trial Judge that he did not employ hired labour for the work specified in paragraph (b) of the definition and that he did not employ hired labour for at least two of the operations of work mentioned in paragraph (a) of the definition. Far from giving evidence to such an effect, the defendant merely stated as follows:—

"I cultivated these fields myself. I got the villagers to help me at times, otherwise I employed labourers to cultivate them."

It seems to us that at the least the defendant made no attempt to prove the facts which the definition in the Act requires him to prove.

The appeal is allowed without costs. The decree is amended in order to provide that the defendant be ejected from land No. 1 Mahamuttetuwa and also from land No. 2. The decree is further amended by substituting Rs. 300/- per annum for Rs. 60/- as the amount of the damages.

WIJAYATILAKE, J.—I agree.

Appeal allowed.