

1966 *Present* : Sansoni, C.J., and Siva Supramaniam, J.

HENDRICK APPUHAMY, Appellant, and JOHN APPUHAMY,  
Respondent

*S. C. 261/65—D. C. Negombo, 643/L*

*Paddy Lands Act, No. 1 of 1958—Remedies provided thereunder—Machinery for implementing them—Ouster of jurisdiction of the Courts—Sections 3 (2), 4 (1) (3) (4) (5) (9) (10), 4 (1A), 6 to 10, 14, 18 to 21.*

The Paddy Lands Act provides the sole machinery to which a landlord must resort if he wants to have his tenant cultivator evicted or his paddy field properly cultivated. No other remedy is available to him since this Act was passed, for the Act takes away the jurisdiction of the Courts by necessary implication.

The plaintiff, who was the owner of a paddy field in an area where the Paddy Lands Act was in force, instituted action in a District Court claiming ejection of the defendant, his tenant cultivator, from the paddy field on the ground that the defendant failed to maintain it diligently. The plaintiff had complained against the defendant to the Cultivation Committee under section 14 of the Paddy Lands Act, but he had not obtained any decision. The trial Judge held that, as there was no section in the Paddy Lands Act to oust the jurisdiction of the District Court, he had jurisdiction to hear the case.

*Held*, that the action was not maintainable. The plaintiff should have sought his remedy under the Paddy Lands Act and should not have filed action in the District Court.

**A**PPEAL from a judgment of the District Court, Negombo.

*J. W. Subasinghe*, with *R. L. N. de Zoysa*, for the Defendant-Appellant.

*N. E. Weerasooria, Q.C.*, with *W. D. Gunasekera*, for the Plaintiff-Respondent.

*Cur. adv. vult.*

October 10, 1966. SANSONI, C.J.—

In this action the owner of a paddy field seeks to have his tenant cultivator ejected from it. He also claims damages for wrongful possession. In his plaint, which was filed in 1963, he has stated that from about 1959 the defendant failed to maintain the paddy field diligently, with the result that the yield began to deteriorate progressively. The defendant in his answer denied the allegation that he had not maintained the field in a proper state. He has also raised the important question of law, that the action could not be maintained in view of the Paddy Lands Act No. 1 of 1958.

It was admitted at the trial that this Act was in force in this area at the relevant time. The long title of the Act recites that it is “an Act to provide security of tenure to tenant cultivators of paddy lands”, and various other matters.

Certain provisions of the Act may be considered in this connection. Section 4(1) states:—“A tenant cultivator of any extent of paddy land shall have the right to occupy and use such extent in accordance with the provisions of this Act, and shall not be evicted from such extent notwithstanding anything to the contrary in any oral or written agreement by which such extent has been let to such tenant cultivator and no person shall interfere in the occupation and use of such extent by the tenant cultivator, and the landlord shall not demand or receive from the tenant cultivator any rent in excess of the rent required by this Act to be paid in respect of such extent to the landlord.”

The word “evict” has been defined in section 63 to mean, in relation to a tenant cultivator, “to deprive, by using direct or indirect methods, that tenant cultivator of his right to use, occupy and cultivate the whole or any part of the extent of paddy land let to him”.

Section 3(2) enables a tenant cultivator who has been evicted “otherwise than by an order of a court” to complain to the Commissioner of Agrarian Services, where such eviction has taken place before the Act came into operation in that particular area. I only draw attention to

this because it is important to decide whether the word "evict" in section 4 (1) includes eviction by an order of a court. In the absence of a specific exception such as is to be found in section 3 (2), I think the word as used in section 4 (1) includes eviction by an order of a court. Section 4 (1A) enables a tenant cultivator to notify the Commissioner that he has been evicted, and after the landlord has been heard, the Commissioner may decide that the tenant cultivator shall be entitled to have the use and occupation of the land restored to him, and order every other person in occupation to vacate it.

There are further provisions in section 4 which protect the rights of a tenant cultivator. For example, his rights shall not be affected in any manner by a voluntary or forced sale, or by a transfer by gift or last will or otherwise, or by the devolution by the law of inheritance of the right title and interest of the landlord of the field : section 4 (3). The tenant cultivator's right cannot be sequestered, seized or sold in execution of any decree of any court : section 4 (4).

Under section 4 (5) no landlord may, except with the written sanction of the Commissioner, evict from a paddy land any person who would be the tenant cultivator if the Act were to be brought into operation in that area. Under section 4 (9) any person who contravenes sub-sections (1) and (5) would be guilty of an offence punishable with a fine. Section 4 (10) prohibits the use of threats or force or violence against a tenant cultivator to prevent him exercising any right or privilege conferred upon him by this Act.

A tenant cultivator may nominate a successor in respect of his right to cultivate the extent he is entitled to. (Section 6). When he dies without nominating a successor, his rights devolve on his surviving spouse, and failing her on one of the relatives. (Section 7). He can transfer his rights by sale, gift or otherwise and his transferee then becomes the tenant cultivator. (Sections 8 and 9). If he dies without leaving a surviving spouse or relative or nominated successor, his rights vest in the Cultivation Committee. (Section 10).

Section 14 enables a landlord to become an owner cultivator of an area of paddy land, in respect of which there is a tenant cultivator, by applying to the Cultivation Committee. The Commissioner can permit the landlord to cultivate an approved area not exceeding 5 acres ; and the Cultivation Committee can order the tenant cultivator to vacate that area, in default of which he shall be evicted. If the owner cultivator thereafter fails to cultivate the land he may be ordered to vacate it, and the Cultivation Committee can restore possession to the former tenant cultivator or some other suitable person. This section is important, since it provides the remedy by which a landlord can recover the extent, or a part of it, which was in the tenant cultivator's possession.

Under sections 18, 19 and 20 cultivators and landlords must cultivate their paddy lands in accordance with the principles of good paddy cultivation. If they fail to do so, the Cultivation Committee may recommend to the Commissioner to make a Supervision Order; and if the standard of cultivation does not improve, the Commissioner can issue an order of dispossession under which the cultivator or the landlord, as the case may be, must leave the land in question. Section 21 makes provision for the eviction of a person who fails to vacate in obedience to an order of dispossession.

I do not think it necessary to refer to any other sections of the Act. It seems clear that special rights have been conferred by the Act upon tenant cultivators and special liabilities have also been imposed on landlords, quite distinct from their common law rights and liabilities. The Act makes specific provision for what is to happen in case of any breach of its provisions. Most significant, for the purpose of this appeal, are the special rights conferred upon tenant cultivators with regard to the quiet and undisturbed possession of their extents of paddy land, and their restoration to possession if evicted. It is clear that since this Act was passed, the landowner of a paddy land no longer has the freedom he previously enjoyed in regard to the use and occupation of that land or the manner of dealing with it. His common law rights have been considerably curtailed, no doubt in the interests of good paddy cultivation and the country's food supply.

In *Wilkinson v. Barking Corporation*<sup>1</sup> Asquith L.J. said—"It is undoubtedly good law 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 remedy or that tribunal, and not to others. As the House of Lords ruled in *Pasmore v. Oswaldtwistle U.D.C.* (1898) A.C. 387 (per Lord Halsbury): 'The principle that where a specific remedy is given by a statute, it thereby deprives the person who insists upon a remedy of any other form of remedy than that given by the statute, is one which is very familiar and which runs through the law.'" Lord Watson in *Barraclough v. Brown*<sup>2</sup> said: "The right and the remedy are given *uno flatu*, and the one cannot be dissociated from the other . . . . . It cannot be the duty of any Court to pronounce an order when it plainly appears that, in so doing, the Court would be using a jurisdiction which the Legislature has forbidden it to exercise."

It was argued for the plaintiff that the normal right of access to the Queen's Courts should not be held to be barred unless the statute in question expressly or by necessary implication so provided. This is a sound argument. The only question is whether this Act does or does not take away the jurisdiction of the Courts by necessary implication. If the landlord of every paddy field were to continue to enjoy the rights he had

<sup>1</sup> (1948) 1 K. B. 721.

<sup>2</sup> (1897) A. C. 615.

prior to this Act, and that includes the right to ask for a decree of ejectment against every tenant, this Act may as well be torn up. There would be no rights of tenant cultivators left to be protected by Cultivation Committees or the Commissioner. The statutory protection against eviction, except under certain conditions, would be swept away, and the statutory provision for restoration to possession would be valueless.

The Act provides the machinery to which a landlord must resort if he wants to have his tenant cultivator evicted or his paddy field properly cultivated, and I think this is the only machinery available to him since this Act was passed. A specific remedy has been provided where a landlord finds that a tenant has infringed the rights given to him by the Act and for breach of that statutory right the remedy provided by the Act must be sought. In *Doe v. Bridges*<sup>1</sup> Lord Tenterden said: "Where an Act creates an obligation and enforces the performance in a specific manner, we take it to be a general rule that performance cannot be enforced in any other manner." A similar rule was enunciated by Willes J. in *Wolverhampton New Waterworks Co. v. Hawkesford*<sup>2</sup>, where he said: "Where the statute creates a liability not existing at common law, and gives also a particular remedy for enforcing it . . . . . the party must adopt the form of remedy given by the statute." Another principle applicable here is that where a statutory right cannot, without very great inconvenience, co-exist with the ordinary common law right, the former must have been intended as a substitutional, not as an additional, remedy.

The District Judge when dealing with this question of law in his judgment said that the plaintiff had complained against the defendant to the Cultivation Committee under section 14 of the Act, but he had not obtained any decision. The Judge also said that there was no section in the Act to oust the jurisdiction of the District Court, and therefore held that he had jurisdiction to hear the case. I regret that I am unable to agree with him, for the reasons I have given. The plaintiff should have sought his remedy under the Act and he should not have filed this action.

I would therefore allow this appeal and dismiss the plaintiff's action with costs in both courts.

SIVA SUPRAMANIAM, J.—I agree.

*Appeal allowed.*

<sup>1</sup> (1831) 1 B. and Ad. 847.

<sup>2</sup> (1859) 6 C. B. N. S. 336.