

TILLEKERATNE BANDA AND ANOTHER
v.
KALUBANDA AND ANOTHER

SUPREME COURT.

G. P. S. DE SILVA, C.J., KULATUNGA, J.

AND RAMANATHAN, J.

SC APPEAL NO. 29/92.

MARCH 02, 1993.

Tenant cultivator – Dispossession by injunction – Eviction – Agrarian Services Act s. 5 (5) – Jurisdiction of District Court.

The respondent was deprived of the occupation of a paddy field pursuant to an interim injunction issued by the District Court. An Assistant Commissioner of Agrarian Services made order that the respondent was a tenant cultivator and that he had been evicted. The Court of Appeal affirmed the said order holding that the District Court had no jurisdiction to issue an injunction as the matter was within the exclusive jurisdiction of the Commissioner of Agrarian Services.

Held :

1. The District Court lacks jurisdiction where the owner of a paddy field seeks to have his tenant cultivator ejected from it.
2. Here the landlord instituted the action on the basis that the respondent was a trespasser ; hence it cannot be stated that the interim order was made without jurisdiction.
3. The view that there was an eviction of the respondent by the landlord is erroneous.

Cases relied on :

Hendrick Appuhamy v. John Appuhamy

APPEAL from judgment of the Court of Appeal.

K. S. Tillekeratne for appellant.

S. C. B. Walgampaya for respondent.

March 02, 1993.

G. P. S. DE SILVA, C. J.

The respondent to this appeal made an application dated 15th March 1977 to the Assistant Commissioner of Agrarian Services complaining that he was evicted by the landlord (who is now the appellant before us) from the paddy field called ' Webodakumbura '. The basic ground of his complaint was that by virtue of an order of the District Court of Kurunegala he was prevented from cultivating the paddy field. The other point that arises for decision on this appeal is whether the fact that the applicant was prevented from cultivating the paddy field by virtue of an order of Court amounts to "eviction" within the meaning of section 5 (5) of the Agrarian Services Act, No. 58 of 1979 read with the definition of the expression "eviction" in section 68 of the said Act. The Court of Appeal took the view that the order of the District Court amounts to "eviction" within the meaning of the Act.

It is to be noted that the respondent who relied on the order of the District Court has not produced a copy of that order nor had he produced a copy of the plaint and proceedings in the District Court. In fact the Court of Appeal in the course of its judgment observed that "it is rather unfortunate that neither the plaint nor the order of the District Court had been produced at the inquiry (before the Assistant Commissioner of Agrarian Services) or in this Court". Mr. Walgampaya for the respondent contended that the District Court had no jurisdiction to issue the order complained of, and he relied strongly on the judgment in *Hendrick Appuhamy v. John Appuhamy* ⁽¹⁾. In the first place, it would appear that *Hendrick Appuhamy's* case was an action instituted by the owner of a paddy field seeking to have his *tenant cultivator* ejected from it.

Mr. Walgampaya stated that according to the proceedings before the Assistant Commissioner for Agrarian Services, the landlord had instituted in the District Court of Kurunegala an action of declaration of title and ejection of the respondent on the basis that the respondent was a *trespasser*. Therefore in our view *Hendrick Appuhamy's* case has no application to the instant case.

Moreover having regard to the fact that the action in the District Court was on the basis that the respondent was a ' trespasser ', it cannot be stated that the issue of the order by the Court was made without jurisdiction. In these circumstances we are of the view that

the Court of Appeal was in error when it took the view that there was an eviction of the respondent by the Appellant-Landlord. We accordingly allow the appeal and set aside the order of the Court of Appeal and the order of the Assistant Commissioner of Agrarian Services. The decision in this appeal will not effect any proceedings pending in any Court or other forum. In all the circumstances we make no order for costs.

KULATUNGA, J. – I agree.

RAMANATHAN, J. – I agree.

Appeal allowed.
