

1972

Present : H. N. G. Fernando, C.J.

A. A. GUNAWARDENA, Appellant, and Mrs. R. K. D.
GUNAWARDENA, Respondent

S. C. 26/71—Labour Tribunal, 4/M/736

*Industrial dispute—Co-owner employed by the other co-owners—His status as
“workman”.*

A co-owner of a land who is paid a salary by the other co-owners in order to look after the land falls under the category of an employee and is, therefore, entitled to claim compensation for wrongful termination of his services.

APPEAL from an order of a Labour Tribunal.

N. Satyendra, for the applicant-appellant.

Miss Adela P. Abeyratne, for the employer-respondent.

March 10, 1972. H. N. G. FERNANDO, C.J.—

It appears from the application made to the Labour Tribunal by this applicant and from the application which he later filed, that according to him he had been employed from about 1963 as the Superintendent of an estate owned by one Mr. L. A. Gunawardena. After the death of the owner in April, 1970 the heirs of Mr. Gunawardena had on 1st May, 1970 consented to the applicant looking after the estate. The applicant himself owned a 1/6th share of the estate. Early in June, 1970 however, the widow of L. A. Gunawardena who had been the administratrix of her husband's estate had terminated his services.

¹ (1966) 1 A.E.R. 524.

² (1954) 55 N. L. R. 410.

One claim of the applicant before the tribunal was for compensation for the termination of his services by the widow. Secondly, the applicant also claimed arrears of salary on the basis that he had been formerly employed as a Superintendent and had not been paid his salary for two years by the deceased owner. He also made a third claim, for salary for two years for other services alleged to have been rendered by him to the deceased. I should state at once that these two claims for arrears of salary are not maintainable against the widow in these proceedings; and accordingly there remains only for consideration the claim for compensation for the alleged wrongful discontinuance of the applicant's services in June, 1970.

At the inquiry the applicant gave evidence, in which he stated *inter alia* that he himself owned a 1/6th share of the estate. The applicant referred to what he alleged to be his employment by the other co-owners as Superintendent of the estate with effect from 1st May, 1970. In regard to salary he stated that the deceased owner had promised him a monthly salary of Rs. 300 and he alleged that his employment from May, 1970 by the co-owners was in renewal of that former employment, thus implying that the salary attached to his alleged employment from May, 1970 was Rs. 300 a month.

The applicant was not cross-examined and the proctor for the respondent widow merely made certain statements the relevancy of which is certainly not clear to me. Thereafter the President of the Tribunal dismissed the application in an order which discloses only one reason for that dismissal.

“ When a co-owner of an estate looks after the said estate he does not fall under the category of an employee. The applicant should be treated as the respondent's principal. The applicant is not an employee. ”

The President has misdirected himself in holding that a co-owner of a land cannot be an employee of that land in the capacity of its Superintendent. It is open to some of the co-owners of a land to engage the services of another co-owner in order to manage the land, and such an engagement can well be on the terms that a salary is to be paid in respect of these services. Since the only ground on which the application was dismissed is quite untenable, the order of dismissal has to be set aside and a fresh inquiry will have to be held by another Tribunal, but only into the claim of the applicant that he was employed on 1st May, 1970 as the Superintendent of this estate, that he was entitled to a salary in respect of that employment and that he should receive compensation in respect of the termination of that employment in June, 1970. The fact that the applicant may have been employed formerly by the previous owner will not be relevant to the question of compensation.

The appellant will be entitled to the costs of this appeal.

Order set aside.