

1961

Present : Tambiah, J.

D. P. M. WIJEYADORU (Assistant Commissioner of Agrarian Services), Appellant, and M. SIRISENA, Respondent

S. C. 594—M. C. Gampola 9320

Paddy Lands Act, No. 1 of 1958—Ande cultivator—Forcible eviction by landlord—“Tenant cultivator”—Remedy against landlord—Sections 3 (1), 4 (1), 4 (5), 4 (9).

K was an ande cultivator of a paddy field which had been let to him under an oral agreement between him and the accused, who was the owner. The field was situated in an Administrative District where the provisions of section 4 (5) of the Paddy Lands Act No. 1 of 1958, which came into operation in September 1958, were applicable. It was worked only in the Maha season and lay fallow from March to August every year.

It was found by the trial Judge that K was an ande cultivator under the accused for the Maha season in 1958, which commenced in August, 1958 and ended in February, 1959. It was also found that K was forcibly evicted by the accused in April, 1959.

Held, that K was a tenant cultivator within the meaning of section 3 (1) of the Paddy Lands Act. Accordingly, the accused was liable to be punished under section 4 (9) for evicting the cultivator in contravention of section 4 (5). The fact that the eviction took place in April, 1959, outside the Maha season, was not material.

APPEAL from a judgment of the Magistrate's Court, Gampola.

J. G. T. Weeraratne, Crown Counsel, with *V. C. Gunatilaka*, Crown Counsel, for the Complainant-Appellant.

G. P. J. Kurukulasuriya, for the Accused-Respondent.

Our. adv. vult.

March 14, 1961. TAMBIAH, J.—

In this case the accused-respondent was charged as follows: "You, being the landlord of an extent of paddy land called Aswedduma Kumbura, situated at Tumpelawaka in the Administrative District of Kandy, in which said Administrative District the provisions of section 4 (1) of the Paddy Lands Act No. 1 of 1958 came into operation on the 20th day of September, 1958, in terms of an order made under section 2 (1) of the said Act by the Minister of Agriculture and Food and published in the *Gazette Extraordinary* No. 11,528 of 19th September, 1958, did in April, 1959, at Tumpelawaka, within the jurisdiction of this Court, evict one H. G. Kirihamy a tenant cultivator of the said extent of paddy land in breach of section 4 (1) of the Paddy Lands Act No. 1 of 1958 and that you did thereby commit an offence punishable under section 4 (9) of the said Act."

It is not disputed that the Paddy Lands Act became applicable to the area where this land is situated in September, 1958 and it is common ground that the accused is the owner of the land referred to in the charge. Kirihamy stated in the course of his evidence that his father-in-law was working this field originally as an ande cultivator under the accused and after his father-in-law died in 1957, he succeeded as the ande cultivator and he continued to work the field on this basis. When he worked this field from 1957-59 on this basis he gave the accused half share of the produce, but when he stopped working this field, in March 1959, he gave the accused $\frac{1}{4}$ share according to the Paddy Lands Act, and he himself took $\frac{3}{4}$ share. Kirihamy stated that because he gave the accused the share according to the Paddy Lands Act, the accused asked him to stop working the field and thereafter came with some labourers and irrigated the field in April, 1959. He also stated that this field is worked only in the Maha season and lies fallow from March to August every year.

After the close of the case for the prosecution, the learned trial Judge held that since Kirihamy was only an ande cultivator under the accused for the Maha season, no offence was committed, even if the accused has evicted Kirihamy in April, 1959. The Magistrate was of the view that in the light of this finding the accused should be acquitted. The learned judge also held that Kirihamy was an ande cultivator under the accused for the Maha season in 1958 and that this season commenced in August and ended in February, 1959. The question for determination is whether Kirihamy was a tenant cultivator within the meaning of s. 3 (1) of the Paddy Lands Act No. 1 of 1958. The sub-section is as follows:—

"Where any person is the cultivator of any extent of paddy land let to him under any oral or written agreement made before or after the coming into operation of this Act in the Administrative District in which that extent wholly or mainly lies, then, if he is a citizen of Ceylon, he shall, subject to the provisions of this Act, be the tenant cultivator of that extent."

It is not denied that Kirihamy is a citizen of Ceylon and that he was the cultivator of the extent of paddy land referred to in the charge, which had been let to him under an oral agreement between him and the accused. This relationship subsisted at the time the Act came into operation, namely, September, 1958, which is the point of time relevant to determine whether the relationship of tenant cultivator and landlord under s. 4 of the Act existed. It follows that Kirihamy was a tenant cultivator within the meaning of s. 3 (1) of the Act. By s. 4 (1) of the Act, a tenant cultivator of any extent of paddy land is given the right to occupy and use such extent in accordance with the provisions of the Act and cannot be evicted from such extent by or at the instance of the landlord, notwithstanding anything to the contrary in any oral or written agreement by which such extent has been let to the tenant cultivator. The landlord is also forbidden from interfering with the occupation and use of such extent by the tenant cultivator, and is prohibited to receive from him any rent in excess of that required by the Act to be paid in respect of such extent of the land. He is further restrained from evicting a tenant cultivator in respect of any land to which this Act applies, except with the written sanction of the Commissioner granted on his being satisfied that the eviction is to be made *bona fide* for any such cause as may be prescribed by the Act. The landlord who evicts the cultivator in contravention of s. 4 (5), commits an offence punishable under s. 4 (9) of the Act.

Mr. Kurukulasuriya who appeared for the accused-respondent submitted that this provision, being one that took away the rights of owners of land, should be strictly construed. He contended that this Act did not apply since in April, 1959, the month in which, according to the charge, the accused is said to have evicted Kirihamy, the latter had no possession and was only an *ande* cultivator for the Maha season which commenced in August, 1959. I regret that I am unable to accept this contention.

The learned Judge has therefore erred in law in holding that the relationship of tenant cultivator and landlord did not exist in April, 1959.

I set aside the order of the learned Magistrate acquitting the accused-respondent and remit the case in order that the learned Judge may proceed with the trial on the footing that Kirihamy was a tenant cultivator under the accused-respondent in respect of the land which has been set out in the charge.

Order of acquittal set aside.