

**KANAGALINGAM
VS
JEGATHESWARAN AND ANOTHER**

COURT OF APPEAL
RANJITH SILVA. J
SALAM. J
CA(PHC) 13/2005
PHC Colombo 96/2002
FEBRUARY 11, 2009

Primary Court Procedure Act - Can a tenant make a Section 66 application? - Judicature Act No. 2 of 1978 - Is the Primary Court prevented from entertaining a Section 66 application where the parties stand in the relationship of tenant and landlord? - Agricultural Lands Law 42 of 1973 - Agrarian Services Act - 58 of 1979 - Urban Development Projects (Special. Provisions) Act - State Lands Recovery of Possession Act - Compared.

Held:

- (1) If a case of rent and ejection is filed in the Primary Court, the Primary Court has no power to go into the matter, but if the dispute is referred to by way of Section 66 application where the jurisdiction is circumscribed and limited to deciding only the issue of possession in order to prevent a breach of the peace, then such action is within the plenary jurisdiction of the Primary Court.

Per Ranjith Silva, J.

“There is no provision under the Rent Act which gives any special remedy to a tenant who is evicted other than to have recourse to the general law of the country to have been restored to possession”.

APPEAL from the High Court, Colombo.

Cases referred to:-

1. *Mansoor and another vs. OIC Avissawella Police and another* 1991 2 Sri LR at 75
2. *Farook vs. Gunawardane* 1980 2 Sri LR 243

3. *Gunaratne vs. Abeysinghe* 1988 1 Sri LR 255

4. *Sri Lanka Broadcasting Corporation vs. De Silva* 1981 2 Sri LR 228

G. R. D. Obeysekera with *Dilan Perera* for appellant

P. Sivaloganathan with *Ms. Rajakulendra* for respondent.

cur. adv. vult

February 11, 2009

RANJITH SILVA, J.

Heard both parties in support of their respective cases.

The only question that has to be decided by this Court is whether the 4th Schedule to the Judicature Act of No. 02 of 1978 prevents the Primary Court from entertaining an application under Section 66 (1) (a) where the parties stand in the relationship of tenant and landlord.

Fourth schedule to the Judicature Act: Actions excluded from the jurisdiction of Primary Courts.

Item: 35: Any action for rent and ejectment and proceeding under the Rent Law.

Counsel for the appellant cites the Judgment of His Lordship Justice S. N. Silva, Judge of the Court of Appeal (as he was then) in *Mansoor and Another vs. O. I. C., Avissawella Police and Another*⁽¹⁾ where His Lordship has held that when there is a specific remedy and a specific tribunal appointed to grant that remedy such disputes should be resolved by the particular tribunal and no other tribunal.

Mansoor and Another vs. O. I. C. Avissawella Police and Another (supra) In this case the question before court was whether the existence of a special remedy under the Agricultural Lands of Law No. 42 of 1973 and the Agrarian Services Act No. 58 of 1979 removed the jurisdiction of the primary court.

The court was called upon to determine whether a tenant cultivator who is evicted from a paddy land can avail himself of an order made by the primary court in proceeding under Part seven of the Primary Courts Procedure Act notwithstanding the remedy provided to him under the provision of the Agricultural Lands Law and later the Agrarian Services Act.

The court up held the submission of the Counsel for the respondent that the remedy under the Agricultural Lands Law and the Agrarian Services Act given to a tenant cultivator to complain of eviction and to secure restoration of possession is a special remedy which excludes any remedy that may be obtained from the exercise of the ordinary jurisdiction of the primary court.

Farook vs. Gunawardena⁽²⁾ This was a case under the State Lands Recovery of Possession Act which provide for ejection by the magistrate. It was held that the statute created a special procedure and an aggrieved person was restricted to the procedure specified in the Act itself.

Gunaratne vs. Abeysinghe⁽³⁾ this was a case under the Urban Development Projects (Special Provisions) Act No. 2 of 1980. This Act provided for the authority to institute action for recovery of possession of premises. The State Lands Recovery of Possession Act which prescribes a procedure similar to the procedure for recovery of possession prescribed by part VA of the statute was under consideration in that appeal. The Urban Development Projects Special Provisions Act gave a special remedy to a person affected by an order for recovery of possession made under the Act namely to move the Supreme Court by way of writ. The aggrieved party, however, made an application for revision to the Court of Appeal against the order for eviction made by the magistrate. In this case the Supreme Court upheld the contention of the

U. D. A. that the Court of Appeal could not act in revision because its jurisdiction had been removed by the Act. (see also *Sri Lanka Broadcasting Corporation vs. de Silva*⁽⁴⁾)

Whilst fully agreeing with the view expressed by His Lordship Justice S. N. Silva, we are of the opinion that the Judgment in that case has no application to the instant case because in the instant case the course of action is not one based on Rent and ejection. The proceedings in the instant case cannot be termed as proceedings under the Rent Laws. Further there is no provision under the Rent Act which gives any special remedy to a tenant who is evicted other than to have recourse to the general law of the country to have him restored to possession. The Primary Court is not deciding an issue finally and whatever the orders that a Primary Court Judge shall make would be temporary in nature. If a case of rent and ejection is filed in the Primary Court, of course the Primary Court Judge has no power to go into that matter. But if the dispute is referred to by way of a 66 application where the jurisdiction is circumscribed and limited to deciding only the issue of possession in order to prevent a breach of the peace then such action is within the plenary jurisdiction of the Primary Court. Therefore, we are unable to sustain this argument and thus we dismiss the appeal.

SALAM, J. - I agree.

Appeal dismissed