

1969 Present : H. N. G. Fernando, C.J., and Pandita-Gunawardene, J.

H. L. ODIRIS, Appellant, and H. L. ANDRAYAS, Respondent.

S. C. 164/67 (Inty.)—D. C. Matara, 4857/P

Paddy Lands Act, No. 1 of 1958—Sections 3 and 63—Tenant-cultivator—His right to assert his interest in a partition action—Partition Act (Cap. 69), s. 48.

The interest of a “tenant-cultivator” under the Paddy Lands Act is an “encumbrance” within the meaning of Section 48 of the Partition Act and, therefore, may properly be specified and conserved in a partition decree entered in terms of that Section.

APPPEAL from an order of the District Court, Matara.

H. Rodrigo, with *Asoka Abeysinghe*, for the defendant-appellant.

W. D. Gunasekera, for the plaintiff-respondent.

Cur. adv. vult.

June 23, 1969. H. N. G. FERNANDO, C.J.—

Section 3 of the Paddy Lands Act of 1958 declares that a person who is the cultivator of any paddy land let to him under any oral or written agreement is the “tenant cultivator” of that paddy land. The definition in s. 63 of the Act of the word “cultivator” is such that every tenant of

a paddy land is not necessarily a "tenant cultivator". In the present case, however, there is no doubt that the defendant, who owned a paddy field in equal half shares with his brother the plaintiff, was the "tenant cultivator" of the brother's half share.

In this action, which the plaintiff instituted for the partition of the paddy field, the defendant asserted that he was the "tenant cultivator" of the plaintiff's half share; and the question which arises is whether the defendant's right or interest as tenant of the plaintiff's share can be specified in the partition decree as being an encumbrance affecting the share and the lot to be allotted to the plaintiff in the interlocutory and final decrees respectively.

The answer to this question seems perfectly simple. If the defendant was the lessee of his brother's half share under a notarial lease the term of which has not expired, then clearly that lease is an encumbrance for which the defendant could secure protection by having the lease specified in the decree.—By reason of the Paddy Lands Act, the defendant, even if he was the tenant under an oral agreement, was a perpetual tenant enjoying rights of tenancy limited only by the Act itself: his rights are thus even more fundamental than those of a lessee under a notarial lease, and he should be entitled to the same protection as s. 48 of the Partition Act allows to such a lessee. The phrase "or any interest whatsoever howsoever arising", in the definition of "encumbrance" in s. 48 amply confirms the conclusion that the interest of a "tenant cultivator" may properly be specified in a partition decree.

I have hesitated to act upon this conclusion only because of a fear that this conclusion may have the consequence that the failure of a "tenant cultivator" to assert his right in a partition action might extinguish that right. If such a consequence is possible, an unscrupulous landlord might resort to a partition action in the hope of defeating the objects of the Paddy Lands Act.

There are, however, observations in the judgment in *Hendrick Appuhamy v. John Appuhamy*¹ tending to the opinion that the fear which I entertain may be unreal. In any event, even if the true position be that a tenant cultivator's right may be extinguished by his failure to assert his right in a partition action, that is an evil which can be averted by some appropriate amendment of the law.

For the reasons stated the appeal is allowed with costs. The judgment of the District Judge is varied, in the paragraph allotting shares, by inserting, after the words "plaintiff to—1/2:", the words "subject to the rights of the defendant as tenant-cultivator of the plaintiff's 1/2 share". This additional matter will no doubt be specified when the Interlocutory and Final Decree are prepared.

PANDITA-GUNAWARDENE, J.—I agree.

Appeal allowed.