

APPUHAMY ALIAS KULASINGHE  
V.  
ABEYRATNE AND ANOTHER

SUPREME COURT.  
G.P.S.DE SILVA, C.J.  
KULATUNGA, J. AND  
RAMANATHAN, J.  
S.C APPEAL NO. 50/95.  
C.A. NO. 260/84.  
A.T. KEGALLE NO. 5042.  
24 OCTOBER 1995.

*Agrarian Services Act, No. 58 of 1979, section 68 - Tenant cultivator - Succession.*

When the tenant cultivator dies his widow claiming to succeed her husband as a tenant cultivator must herself continue to be "cultivator" as defined in section 68 of the Agrarian Services Act. She may enjoy the protection of the Act only so long as she continues to be the cultivator. A person who becomes the tenant cultivator by operation of law may also cease to be tenant cultivator when he fails to perform the functions assigned to a cultivator under section 68 of the Act. Where the claim of the husband to be owner cultivator was rejected, his widow cannot be treated as having succeeded to the tenancy where moreover the widow did not function as the tenant cultivator after her husband's death. No tenancy rights can be claimed through her.

**Case referred to:**

*Alice Nona v. Ranasinghe* (1986) C.A.L.R. Vol. 1 p. 133.

**APPEAL** from judgment of the Court of Appeal.

*Faisz Musthapha P.C.* with *Sanjeewa Jayawardena* for the Appellant.

*D.A.E. Thevarapperuma* for Respondent.

*Cur.adv.vult.*

November 15, 1995.  
**KULATUNGA, J.**

On 24.11.77 the Respondent notified the Agricultural Tribunal in

terms of section 3(3) of the Agricultural Lands Law No. 42 of 1973 that he was the tenant cultivator of a paddy land called "Bulathwatte" from 1975 and that he had been evicted therefrom on 24.09.77. The Appellant is the owner of the land. Whilst proceedings in respect of the said notification were pending before the Agricultural Tribunal, the Agricultural Lands Law was repealed and replaced by the Agrarian Services Act, No.58 of 1979; and the inquiry into the complaint was duly held by an Assistant Commissioner under the said Act. The Commissioner held that the Respondent was the tenant cultivator of the paddy land in dispute and that he had been evicted therefrom.

The Appellant's defence was that he had always been the owner-cultivator of the land. On the basis of the oral and documentary evidence, the Assistant Commissioner found that up to 1975 the Respondent's father (one Mudiyanse) had been the tenant cultivator and on Mudiyanse's death, the Appellant had let the paddy land to the Respondent who cultivated it until the date of his eviction. The Appellant also contended that in any event, assuming that Mudiyanse was the original tenant cultivator, on his death his widow Dingirimahattaya became the lawful successor in terms of section 7 of Law No. 42 of 1973 in the absence of a nomination of a successor by Mudiyanse in terms of section 6; Dingirimahattaya had not transferred her rights to the Respondent in accordance with the procedure prescribed by section 10; hence the Respondent had no status to claim the land *qua* tenant cultivator.

The Assistant Commissioner did not consider the second point raised above; but the Court of Appeal held that the evidence given by the Appellant was that he had been the owner-cultivator throughout; hence the question of rights of succession did not arise. The Court of Appeal affirmed the order made by the Assistant Commissioner. Hence the appeal to this Court. Special leave to appeal was granted on the question whether the Respondent had the status to make a claim to the land in dispute as tenant cultivator.

At the hearing before us, Mr. Jayawardena submitted on behalf of the Appellant that according to the evidence, Dingirimahattaya (who is still alive) used to assist her husband Mudalihamy when he was the cultivator. After Mudiyanse's death, she continued to participate in

cultivating the land. She used to bring food and tea for the men who were assisting in the work. She also used to join in weeding the land. Counsel submitted that in these circumstances, Dingirimahattaya was in fact the cultivator after 1975 within the meaning of the definition "cultivator" under section 54 of the Law, carrying out the requisite operations by a member of her family viz., her son, the Respondent.

Mr. Thevarapperuma for the Respondent submitted that devolution of title under the law is an issue that can arise in a contest between rival claimants of the deceased tenant cultivator's interests and not others; the widow of Mudalihamy has not claimed her rights to the land, that the Appellant's submission on the basis of tenancy rights in the widow cannot help him; that after his claim as owner cultivator was rejected, he cannot claim that the widow should be treated as having succeeded to the tenancy and seek to dispossess the Respondent, on that basis.

There is substance in the submissions made by Counsel for the Respondent. If we are to hold that the Respondent has no right to claim the land in dispute as a tenant cultivator for the reason that his mother is the lawful successor to the tenancy, the Respondent will still be entitled to remain in occupation of the land and cultivate it on behalf of his mother. There is also a question as to whether the Respondent's mother has at all functioned as the tenant cultivator of this land, after the death of her husband. The Respondent's evidence is that during the life time of Mudalihamy he assisted Mudalihamy to cultivate the land; and that after Mudalihamy's death, he alone cultivated it.

No doubt the Respondent's mother assisted her husband as well as the Respondent by taking meals for the workmen and by joining in weeding the paddy field. This is the traditional role of a village woman in paddy cultivation. Apart from this, there is no indication that after her husband's demise she either claimed or exercised the rights of a person who had become the tenant cultivator by operation of law. The indications are that she had abandoned her rights. In *Alice Nona v. Ranasinghe* <sup>(1)</sup> it was held that a wife claiming to succeed to her husband as a tenant cultivator must herself continue to be "cultivator" as defined in section 68 of the Agrarian Services Act. She may enjoy the protection of the Act, only so long as she continues to be the cultiva-

tor. A person who becomes the tenant cultivator by operation of law may also cease to be the tenant cultivator when he fails to perform the functions assigned to a cultivator under section 68 of the Act. In that case, the widow claimed that she had exercised her rights by cultivating the land jointly with her brother; but the Court held against her. In the instant case the widow herself has made no claim of rights.

For the foregoing reasons, I see no error in the judgment of the Court of Appeal. Accordingly, I dismiss the appeal and affirm the judgment of the Court of Appeal with costs which I fix in a sum of Rs.1050/-

**G.P.S. de SILVA, C.J.** – I agree.

**RAMANATHAN, J.** – I agree.

*Appeal dismissed.*