TALAWATUGODA SIRI RATNA THERO AND ANOTHER v. ATHUKORALE

COURT OF APPEAL.
F. N. D. JAYASURIYA, J.
CA. 316/83.
A. T. KALUTARA 13/K/51.
JUNE 26, 1996 AND AUGUST 21, 1996.

Tenant Cultivator – Eviction – Indenture of Lease with the Lease rent fixed – Is that a valid contract of letting and hiring in terms of the Agrarian Services Act, No. 58 of 1979 – Section 17(5) (b).

The former Viharadhipathi of the temple had entered into an indenture of Lease (Notarial), whereby the paddy field was leased to the applicant respondent and to one Perera for a period of five years. The lease rent for this period and the yearly rent were paid in advance.

It was contended in appeal (1) that in as much as the rent was fixed at the inception there was no valid contract of letting and hiring in terms of the Agrarian Services Act, (2) that the field was Devalagama land managed by the Public Trustee and therefore not subject to the Paddy Lands Act, (3) that the lease was in favour of two leases and when one abandons his rights those rights devolve on his successors.

Held:

(i) Whether there is a contract of letting and hiring must be viewed in the background of the common law, the Roman Dutch Law as well.

The Roman Dutch Law sets out that the rent must be certain and fixed, it may be ascertained or be readily ascertainable, but where the rent is certain there is a valid contract of letting and hiring.

The interpretation clause in the Agrarian Services Act in defining the expression letting has adopted the Roman Dutch Law principles.

If the rent is fixed in advance for a paddy field for five years without reference to the gazette which would specify the particular rent for different seasons and

difficult areas, still there would be a valid contract of letting and hiring in terms of the Act.

If the original amount is excessive when the tenant is prosecuted under section 18 read with section 28, he could set off the excess rent paid. If there is a shortfall the landlord is entitled to recover the shortfall in terms of section 17(1) – section 17(5).

(ii) Even under the provisions of the Paddy Lands Act, Agricultural Lands Law – all paddy fields are subject to the provisions of the aforesaid Acts.

(iii) When there are joint ande cultivators one ande cultivator is entitled to transfer his right to the other. Even in the event of death, the line of devolution and succession is that the joint ande cultivator's rights devolve upon the other and not on his heirs.

APPEAL under the Agrarian Services Act.

Cases referred to:

1. *Commissioner of Agrarian Services v. Kumarasamy* 62 NLR 574.
2. *Babanis v. Jamis* – [1989] 2 Sri LR 344.

N. R. M. Daluwatte, P.C., with *Manohara R. de Silva, Samantha Abeyjeewa, Gamini de Silva* for respondent-appellant.

Hemasiri Withanachchi for applicant-respondent.

Cur. adv. vult.

September 27, 1996.

F. N. D. JAYASURIYA, J.

The applicant, A. M. Atukorale, has preferred this complaint to the Assistant Commissioner of Agrarian Services (Inquiries), Kalutara alleging that the respondent's predecessor in title, Karadena Sirisumana Thero of Raja Maha Vihare, Pokunuwita, through the agency of Weligampitiya Meegaha Jayasena, wrongfully and unlawfully evicted him from the paddy field, Hataren Andadena, Ambalawela, in extent two bushels of paddy sowing on 20.9.80 and

has claimed a declaration that he was the ande cultivator of the aforesaid paddy field and that he be restored to occupation of the paddy field. This paddy field is owned by the Viharadhipathi of the Raja Maha Vihare, Pokunuwita and its affairs are administered in terms of the provisions of the Buddhist Maha Vihare and Devalagam Act by the Public Trustee. The former Viharadhipathi of the said temple, Sirisumana Thero, had entered into an indenture of lease bearing No. 17634 attested by K. Sirisoma Tillekaratne, Notary Public, whereby the aforesaid paddy field was leased by the said Viharadhipathi to A. M. Atukorale, the applicant, and to K. Jolishi Perera for a period of five years. This document has been marked and produced in evidence as P1. The currency of the lease was for a period of five years commencing from the Maha season of 1975-76 and the lease would have terminated in the Yala season of 1980. The lease rent for the period of five years was paid in advance by the lessees to the aforesaid lessor, Karadena Sirisumana Thero prior to the execution of the lease and the yearly rent was Rs. 500 and the aggregate rent paid in advance for the period of five years was Rs. 2500. The Public Trustee had approved the execution of the aforesaid lease bond. Having entered into the lease and having indulged in the cultivation processes, K. Dionis Perera has transferred his leasehold rights and his co-ande rights to his co-cultivator, the applicant.

In this matter, the only question of law raised on behalf of the appellant was to the effect that there was an Indenture of Lease whereby the lease rent was fixed at Rs. 2500 for a period of five years. It was sought to be argued on behalf of the appellant that inasmuch as the rent was fixed at the inception, there was no valid contract of letting and hiring in terms of the Agrarian Services Act. That was the sole question of law that was argued. I venture to take a different view of the law. The Interpretation Clause defines "letting" for purposes of the Agrarian Services Act and the definition of the phrase "let" with reference to any extent of paddy field means to permit any person under an oral or written agreement to occupy and use such extent in consideration of the payment of rent consisting of a sum of money... As far as the expression "let" as used in the

Agrarian Services Act is concerned, there would be a valid contract of letting and hiring provided the rent is fixed, even in advance, in a definite sum of money for a specified period of time. Whether there is a contract of letting and hiring must be viewed in the background of the common law, the Roman-Dutch Law as well. The Roman-Dutch Law sets out that the rent must be certain and fixed; it may be ascertained or be readily ascertainable but where the rent is certain there is a valid contract of letting and hiring. Vide – Lee and Honore – Sections 379, 377 and 494. The Interpretation Clause in defining the expressions "letting" has adopted the Roman-Dutch Law principle. If the rent is fixed in advance for a paddy field for five years without reference to the gazette which would specify the particular rent for different seasons and different areas, still there would be a valid contract of letting and hiring in terms of the provisions of the Agrarian Services Act.

In this case the rent was evidenced by the contents of P1, that is the Indenture of Lease which fixed it in advance at Rs. 2500 i.e. Rs. 500 per year for a period of five years. It was certain and ascertained. Therefore, there was a valid contract of letting and hiring and there was a valid letting in terms of the expression "let" in the Interpretation Clause. Hence, there was a valid contract of letting in pursuance of the Indenture of Lease. The evidence in the case is that the lessee took possession of the paddy field and personally indulged in the processes of cultivation which are defined in section 68 of the Agrarian Services Act. The moment he performed those acts of cultivation he becomes a tenant cultivator. Thus he satisfied the criterion of a tenant cultivator in terms of section 68 and thus the statutory protection of the Act attached to him. If the rent so fixed in the Indenture of Lease is excessive then in the event of the filing of an application with the Commissioner, the Assistant Commissioner will determine the rent payable under the Act and he would be guided by the provisions of section 17 of the said Act and if there is an excess, then at such inquiry the tenant would get credit for the excess rent. The fact that the rent is fixed in advance in a certain sum of money is not a legal impediment for the relationship of landlord and ande cultivator to arise in law. The argument of learned Counsel

for the appellant was founded on the provisions of section 17(5) (b). Section 17 states: "The Commissioner shall by Notification published in the Gazette determine from time to time in accordance with the provisions of this section the rent to be paid by the tenant cultivator of any extent of paddy land." According to this provision the determination could change from time to time. Section 17(5) (b) on which much stress was placed by learned President's Counsel appearing for the appellant sets out that "where the landlord desires to have the rent in money and the tenant cultivator agrees to pay the rent in money, **the equivalent in money of the rent payable in paddy** under paragraph (a) of this sub-section, computed at the price fixed for the time being for paddy", shall be the rent payable and this provision, shall hold good."

Now, if the original amount fixed is excessive, when the tenant is prosecuted upon an application filed under section 18 read with section 26 of the said Act, he is in a position to set off the excess rent paid. If there is a shortfall upon such an inquiry the landlord is entitled to recover the shortfall in rents in terms of the provisions of section 17(1) and section 17(5) of the said Act. These provisions do not postulate that the rent so determined under section 17(1) ought to be fixed in advance in the agreement for the letting to be valid in law. That is not feasible and practicable. If one were to construe the law in that manner disregarding the definition of the expression "letting" in the said Act,, it would lead to a reductio *ad absordum.*

Reliance was placed on the judgment delivered by Justice Sansoni in *Commissioner of Agrarian Services v. Kumarasamy*[1] and Justice Sansoni, with respect, was dealing with the issue of payment of rent in paddy and he took the view that if you pay the rent in paddy by tendering paddy derived from some other paddy field, then such a tender would not be payment of rent. That decision has no application whatsoever to the present issue before this Court. Here we are not dealing with payment of rent in paddy, here it is an instance of payment in money. Therefore, I hold that the submissions based on this decision are untenable because the decision of Justice

Sansoni (*supra)* has no application whatsoever to the instant case. The learned Judge was dealing with a situation where the rent was paid in paddy and he held that it should be paid out of paddy harvested from the particular paddy field. "If it was the **latter**, that is **payment of rent in paddy,** it would not be letting unless that paddy was a share of the produce from that estate." (per Justice Sansoni) That decision has no application. We are here concerned with payment of rents in money which is permissible in terms of section 17(5) of the said Act.

In regard to the other points which were not stressed at the argument but which are contained in the petition of appeal, namely that there was the original application before eviction when there was only a threat of eviction, that application was rightly dismissed. Thereafter, an application has been made to the Agrarian Services Officer on 20.11.1980 relating to an eviction effected at a later point of time. The earlier alleged threat was in April, 1980, but the later eviction was on 20.9.1980. That complaint and application was misplaced but the official books were produced at the inquiry to establish that such a complaint had been made. Thus, the disappearance of the complaint is not referable to any fault on the part of the applicant and if there had been any lapse on the part of the Agrarian Service Office, that lapse cannot prejudice the applicant. Therefore, I hold that the Assistant Commissioner had jurisdiction to entertain the present application and proceed with the inquiry.

Then, it was contended that since the paddy field in question is Devalagam land, which was managed by the Public Trustee under the provisions of the Buddhist Viharas and Devalagam Temporalities Act it is not subject to the provisions of the Paddy Lands Act. This is a misconceived submission. Even under the provisions of the Paddy Lands Act or under the provisions of the Agricultural Lands Law, the decisions of this Court have held that all paddy lands are subject to the provisions of the aforesaid acts and there are no statutory exception in respect of Devalagam lands.

It was next argued that the lease was in favour of two lessees and both have entered upon the paddy field and indulged in cultivation process and therefore when a lessee abandons his rights, those rights devolve on his successors. But that contention would not hold good as the Assistant Commissioner has come to a strong finding of fact that these two lessees, after the execution of the lease, got into the paddy field and for sometime both of them performed the particular acts of cultivation specified in section 68 of the Act and looked after the crop and tended the crop and thereby they became co-ande cultivators. When they are joint ande cultivators, one ande cultivator is entitled to transfer his rights to the other joint tenant cultivator. Vide document marked P4 at the inquiry. Even in the event of **death,** the line of devolution and succession is that the joint ande cultivator's rights devolve upon the other co-cultivator and not on his heirs. That is the line of succession prescribed by the Act.

In the circumstances, I hold that there is no merit whatsoever in the appeal. This Court has no power to interfere with the strong findings of fact reached by the Assistant Commissioner in *Babanis v. Jamis*[2]. On the contrary, this Court is in agreement with those findings of fact and I have answered the only question of law raised against the appellant. I hold that where there is a lease bond providing for the payment of rent in advance, and where the rent is paid in advance, thereafter the lessee enters the paddy field and performs the processes of cultivation spelt out in section 68 of the Act, then he becomes an ande cultivator and the payment of rent in advance is not a bar to his claim to ande rights. I hold that there is no misdirection in point of fact or law, no failure to take into account the effect of relevant evidence led at the inquiry, no improper evaluation of evidence and neither is there any defect of procedure, on a perusal of the totality of the evidence and a consideration of the order pronounced. The only point of law raised is without substance and I, therefore, proceed to dismiss the appeal with costs in a sum of Rs. 1050 payable by the first and second appellant to the applicant-respondent.

Appeal dismissed.