KIRIHAMY
V.
DINGIRIMATHTHAYA

SUPREME COURT.
G. P. S. DE SILVA , C.J.
RAMANATHAN,J.
WIJETUNGA, J.
S.C. 100/95
C. A. 447/83
D. C. KURUNEGALA
4694/L
JULY 23, 1996.

Paddy Lands Act No. 1 of 1958 - Agricultural Lands Law 42 of 1973 - S. 3(1), (13), (14), S. 3(b) b(i) (ii) - Eviction - Deeming clause - Threat to Evict.

The Plaintiff instituted action seeking a declaration that he is the lawful Tenant Cultivator. The Defendant-Respondent raised the plea that the District Court has no jurisdiction to hear and determine the action.The District Judge entered judgment for the Plaintiff. The Court of Appeal reversed same. On appeal.

Held:

(i) The operative concept in the definition - (Evict), is the deprivation of the Tenant Cultivators' right to use, occupy and cultivate the field. The deprivation may be by using direct or indirect methods.

(ii) A threat to evict or interference in the occupation and use of the land does not amount to 'Eviction'. The remedy of a Tenant Cultivaor who complains of eviction is set out in S.3 (3).

(iii) The case for the Plaintiff is that the Defendant had forcibly entered the paddy field and had threatened to evict him and had obstructed him in the exercise of his 'Ande Rights' the complaint is not one of eviction but of a threat to evict.

(iv) On the cause of action pleaded the Plaintiff has no remedy nor can he claim any relief under the provisions of law No. 42 of 1973.

It is undoubtedly good law that where a statute creates a right and in plain language, gives a specific remedy or appoints a specific tribunal, for its enforcement, a party seeking to enforce the right must resort to that remedy or that Tribunal and not to others.

AN APPEAL from the judgment of the Court of Appeal.

Cases referred to:

1. *Hendrick Appuhamy v. John Appuhamy* - 69 NLR 29.
2. *Wilkinson v. Barking Corporation* - 1948 - 1KB 721
3. *Dolawatte v. Gamage* 1989 - 2 SLR 327.

Sanath Jayatilake for Plaintiff-Appellant.
D. R. P. Goonetilake with *S. A. D. S. Suraweera* for Deffendant-Respondent

Cur. adv. vult.

August 22, 1996.
G. P. S. DE SILVA, C.J.

The Plaintiff brought this action seeking, inter alia, a declaration that he is the lawful tenant cultivator of a half share of the paddy land in suit. The Defendant in his answer raised the plea that the District Court has no jurisdiction to hear and determine this action. The District Court held against the Defendant on the issue of jurisdiction and entered judgment for the Plaintiff. The Defendant appealed to the Court of Appeal which upheld the Defendant's plea that the District Court has no jurisdiction and dismissed the Plaintiff's action. Hence the appeal of the Plaintiff to this court.

The Court of Appeal relied heavily on the judgment of Sansoni C.J., in *Hendrick Appuhamy v. John Appuhamy*,[1] in taking the view that the District Court had no jurisdiction to hear and determine this action.

That was a case where the owner of a paddy field sought to have his tenant cultivator ejected from it. In his plaint filed in 1963 he averred that "from about 1959 the Defendant failed to maintain the paddy land diligently with the result that the yield began to deteriorate progressively." Sansoni C.J., examined several provisions of the Paddy Lands Act No. 1 of 1958 and in particular section 14 which enabled " a landlord to become an owner cultivator of an area of paddy land, in respect of which there is a tenant cultivator, by applying to the Cultivation Committee."Referring to section 14 the learned Chief Justice observed, "This section is important since it provides the remedy by which a landlord can recover the extent or a part of it, which was in the tenant cultivator's possession". His Lordship reasoned thus: "The Act provides the machinery to which a landlord must resort if he wants to have his tenant cultivator evicted or his paddy field properly cultivated, and I think this is the only machinery available to him since this Act was passed." Sansoni C.J., relied on the principle set out by Asquith LJ in *Wilkinson v. Barking Corporation*[2] "It is undoubtedly good law that where a statute creates a right and, in plain language, gives a specific remedy or appoints a specific tribunal for its enforcement, a party seeking to enforce the right must resort to that remedy or that tribunal, and not to others."

Does the ratio decidendi of the above decision apply to the appeal before us? I think not. It is of intense relevance to note that the case for the Plaintiff as pleaded in his plaint is that the defendant had forcibly entered the paddy field and had **threatened to evict him** and had obstructed him in the exercise of his "ande rights." What needs to be stressed for present purposes is that the complaint is **not one of eviction** but of a **threat to evict.**

Mr. D. R. P. Goonetilake for the defendant-respondent relied on section 3(1), 3(14) and the definition of the expression "evict" in section 54 of the Agricultural Lands Law No. 42 of 1973 in support of the judgment of the Court of Appeal.

Section 3(1) reads thus:-

> "A tenant cultivator of any extent of paddy land shall have the right to occupy and use such extent in accordance with the

provisions of this Law and shall not be evicted from such extent notwithstanding anything to the contrary in any oral or written agreement by which such extent has been let to such tenant cultivator and no person shall interfere in the occupation and use of such extent by the tenant cultivator and the landlord shall not demand or receive from the tenant cultivator any rent in excess of the rent required by this Law to be paid in respect of such extent to the landlord."

Section 3(14) provides as follows:-

"For the purpose of this section, if any person directly or indirectly makes use of, or threatens to make use of, any force, violence, or restraint or inflicts, or threatens to inflict, any harm, damage or loss upon or against a tenant cultivator of any extent of paddy land in order to induce, compel, or prevail upon, that tenant cultivator to refrain from exercising any right or privilege conferred upon him by or under this Law, such person shall be deemed to interfere in the occupation and use of such extent by that tenant cultivator."

"Evict" is defined in the following terms:-

"Evict means in relation to a tenant cultivator, to deprive by using direct or indirect methods that tenant cultivator of his right to use occupy and cultivate the whole or any part of the extent of paddy land let to him."

It seems to me that the operative concept in the definition is the **deprivation** of the tenant cultivator's right to use occupy and cultivate the paddy land. The "deprivation" may be by using direct or indirect methods. A **threat** to evict or **interference** in the occupation and use of the land does not amount to "eviction" within the meaning of the definition unless such interference results in physical dispossession. This view is supported by the terms of section 3(8) which makes it clear that once the Agricultural Tribunal (or the Supreme Court in appeal) holds that there has been an "eviction" then "the person evicted shall be entitled to have the use and occupation of such exent **restored** to him and theTribunal

shall in writing order that every person in occupation of such extent shall **vacate** it . . .". Section 3(8) (b) (i) and (ii). The words underlined above strongly suggest physical dispossession.

The remedy of the tenant cultivator who complains of **eviction** is set out in section 3(3) which reads thus:-

"Where a tenant cultivator of any extent of paddy land notifies the Agricultural Tribunal (hereinafter referred to as the 'Tribunal') within whose area of authority such extent lies that he has been evicted from such extent, such Tribunal may hold an inquiry for the purpose of deciding the question whether or not such person had been evicted."

Mr. D. R. P. Goonetilake relied heavily on the prohibition against interference "in the occupation and use of such extent by the tenant cultivator" (S.3(1) and the wider meaning given to the expression "interference" by the "deeming" clause in section 3(14)). It seems to me that while such "interference" in the use and occupation of the paddy land does not amount to eviction and the remedy postulated in section 3(3) is not available to the tenant cultivator, yet any such interference would constitute an **offence**. Vide section 3(13). The material part of section 3(13) enacts "If any person contravenes the provisions of this section he shall be guilty of an offence. . ."

The Court of Appeal has misconstrued the definition of the word "evict" and was also in error in applying the principle laid down in *Hendrick Appuhamy v. John Appuhamy* (*supra*) to the facts and circumstances of the case before us. I accordingly hold that on the cause of action pleaded in the plaint the Plaintiff has no remedy nor can he claim any relief under the provisions of the Agricultural Lands Law No. 42 of 1973. For these reasons the appeal is allowed, the judgment of the Court of appeal is set aside and the judgment of the District Court is restored. The Respondent must pay a sum of Rs. 500/- as costs of appeal to the Appellant.

Before I conclude I wish to state that during the argument I indicated to Counsel that I was inclined to the view that the principle set out in *Dolawatta v. Gamage*[3] was applicable to this case. Counsel were