

**HERATH
v.
PETER**

COURT OF APPEAL
S. B. GOONEWARDENE, J. (P/CA) AND
WEERASEKERA, J.
C:A APPLICATION No. 102/82(F)
D.C. MATUGAMA NO. 233/L
NOVEMBER 01, 1989

Agrarian Services Act, No. 58 of 1979, Sections 45(1) and 45(3) – Register of tenant-cultivators maintained under Section 45(1) – Inclusion of name of defendant-respondent in register – Is District Court precluded from determining whether such a defendant-respondent is in fact the tenant-cultivator?

Evidence – Entries in a register declared by statute to be "prima facie evidence" of the facts therein – Evidentiary value thereof.

The plaintiff-respondent filed action in the District Court claiming ownership to an extent of paddy land. The District Judge upheld this claim rejecting the defendants position that he was the tenant-cultivator as evidenced by entries in the Agricultural Registers.

In appeal it was argued for the defendant-appellant that, in terms of the Agrarian Services Act, the Agricultural Tribunal had exclusive jurisdiction to decide the question as to the status of a person who claims to be the tenant-cultivator of a paddy field, and that the District Court was precluded from deciding that question. /

Held:

- (1) The effect of an entry in the register being declared "prima facie evidence of the facts stated therein" is that it is evidence which appears to be sufficient to establish the fact unless rebutted or overcome by other evidence.
- (2) In the instant case, the entry in the register would not prevent the plaintiff-appellant from leading evidence to the contrary to the satisfaction of the District Court that the defendant-appellant is not, despite his registration as such,

in law a "tenant-cultivator" as set out in the Agrarian Services Act.

- (3) Any dispute in respect of a paddy field arising between a landlord and a tenant would have to be determined in the manner provided for in the Agrarian Services Act, and cannot be brought before a Court of Law.
- (4) However, the above principle will apply, only where each party admits the status claimed by the other, ie. of landlord and tenant. The jurisdiction of the Court is not ousted where the status is denied.

Cases referred to:

- (1) *Henrick Appuhamy v. John Appuhamy* 69 NLR 32
- (2) *Dolawatte v. Gamage and another* S.C. Appeal No. 45/83 – S.C. Minutes of 27.09.85.

APPEAL from judgment of District Court, Matugama

D. R. P. Goonetilleke for defendant-appellant

D. J. Walpola with *J.C. Nilanduwa* for plaintiff-respondent.

Cur. adv. vult.

November 01, 1989

S. B. GOONEWARDENE, J. (P/CA)

This appeal is taken against the judgment of the District Judge upholding the case of the plaintiff-respondent that he was the owner of the extent of paddy field which constitutes the subject matter of this action and that the defendant appellant was without any lawful right forcibly in possession of the same.

The case set up by the defendant briefly was that although the plaintiff was the owner of this extent of paddy field, that he was its tenant cultivator and therefore entitled to the protection given by law to such a tenant cultivator. Several extracts from the Agricultural Registers had been produced but the District Judge found that all these extracts do not support the claim of the defendant that he was the tenant cultivator and indeed with reference to those that purported to support his claim the District Judge entertained doubts as to the authenticity of the entries therein.

At the hearing before us Counsel arguing the appeal for the defendant-appellant called in aid the judgment in *Henrick Appuhamy v. John Appuhamy* (1) and contended that it is within the exclusive jurisdiction of the Agricultural Tribunal to decide the question as to the status of a person who claims to be the tenant cultivator of a paddy field.

Subsequent to the decision of that case this question received the consideration of the Supreme Court in the case of *Dolawatte v. Gamage and Another* (2). In that case the present Chief Justice (with Sharvananda, C.J. and Wanasundara, J. agreeing) set out the principle applicable that the jurisdiction of the Agricultural Tribunal is exclusive only in circumstances where each party admits the status claimed by the other of landlord and tenant respectively but that where there was a dispute as to that status the jurisdiction of the District Court is not ousted.

Applying the principle in that case we are of the view that the District Judge properly exercised a jurisdiction granted to him by law and arrived at findings on the material placed before him which being findings of fact we are not disposed to interfere with. We would therefore affirm the judgment of the District Judge and dismiss this appeal but without costs.

Since, as far as we are aware, the case of *Dolawatte v. Gamage and another* (supra) has not been reported and it lays down an important principle of law we think it desirable that a copy of that judgment be appended hereto as an annexure, so that it can, if so advised, get reported in the official law reports in the volume current for this year.

WEERASEKERA, J. I agree.

Appeal dismissed.