ANNEXURE

IN THE SUPREME COURT OF THE REPUBLIC OF SRI LANKA

S.C. APPEAL 45/83.
D.C. HOMAGAMA 1593/L.

Suneetha Rohini Dolawatta,
Plaintiff-Respondent-Appellant
vs.
Buddhadasa Gamage,
1st Defendant-Appellant-Respondent

Dassanayakage Elpi Nona,
2nd Defendant-Respondent-Respondent.

Before: Sharvananda, C.J., Wanasundera, J., and Ranasinghe, J.

Counsel: *Lalanath de Silva*, with *Mrs. Anoma Hegoda*, for Plaintiff-Respondent-Appellant.

Manix Kanagaratnam, with *K.S. Ratnavel* and *W.A. Jayawickrema*, for 1st Defendant-Appellant-Respondent.

Argued on : 7.8.85
Decided on: 27.9.85.

RANASINGHE, J.

The Plaintiff-Appellant instituted these proceedings in the District Court for a declaration of title in respect of the paddy land described in the schedule to the plaint, and for ejectment of the 1st Defendant-Respondent therefrom and for damages. The Plaintiff-Appellant pleaded: that she bought the said paddy land from the 2nd Defendant-Respondent, in the year 1980: that the 1st Defendant-Respondent, claiming to be the tenant-cultivator of the said paddy-land, is in wrongful possession: that the 1st Defendant-Respondent had fraudulently got himself registered as the tenant-cultivator.

The 1st Defendant-Respondent repudiated the claim of wrongful possession; and maintained that: he has been the tenant-cultivator of the said paddy-land since 1971: that the 2nd Defendant-Respondent, who is the mother of the Plaintiff-Appellant, having failed to eject him from the said paddy-land forcibly, has transferred the said paddy-field to the Plaintiff-Appellant: that the two of them, the mother and daughter, are now making a collusive attempt to have him ejected.

At the commencement of the trial a preliminary question of law, relating to the jurisdiction of the District Court to entertain and proceed with this action, was raised on behalf of the 1st Defendant-Respondent. The issue was decided in favour of the Plaintiff-Appellant by the learned trial judge. On an appeal against the said Order, the Court of Appeal, however, reversed the decision of the trial Court; and, having upheld the 1st Defendant-Respondent's plea of jurisdiction, has dismissed the Plaintiff-Appellant's action.

The submission put forward on behalf of the 1st Defendant-Respondent, and which has found favour with the Court of Appeal, is: that the Agrarian Services Act No. 58 of 1979 creates new rights, and also sets out the procedure to be followed in regard to the exercise, assertion and enforcement of such rights: that, regulations have been made under the said Act not only for the preparation revision and maintenance of the register, referred to in Sec 45(1) of

the said Act, but also for the amendment of any particulars contained in such register: that any amendment of any entry in such register should therefore be sought to be effected only in terms of such regulations: that, as sub-sec (3) of Sec 45 makes all entries in such register prima facie evidence of such particulars, it is not open to a court to go behind such entries and examine the accuracy and correctness of such entries: that any dispute relating to a paddy-land arising between the land-lord and a person, whose name has been entered as a tenant-cultivator in such register in respect of such paddy-land, can only be gone into and settled in the manner set out in the said Act: that the jurisdiction of the courts to entertain and determine such dispute has been ousted.

The question which this Court has now to decide is: whether the fact that the name of the 1st Defendant-Respondent has been entered as a tenant-cultivator in the register of agricultural lands maintained under the provisions of Sec 45(1) of the Agrarian Services Act No. 58 of 1979 precluded the District Court from determining, in these proceedings instituted by the Plaintiff-Appellant, whether or not the 1st Defendant-Respondent is a tenant-cultivator of the said paddy-field within the meaning of the said Agrarian Services Act.

It is a clear and settled principle of law that the normal right of access to the ordinary courts of law established by the ordinary law of the land cannot be taken away except by statute law which so provides either expressly or by necessary implication:- *Sanmugan vs. Badulla Cooperative Stores Union Ltd., 54 NLR 16 at 18; Hendrick Appuhamy vs. John Appuhamy 69 N 29 at 32; Re Vandervell Trusts, 1969(3) AER 496, at 500.*

The judgment of the Court of Appeal, finding in favour of the 1st Defendant-Respondent, has been based mainly upon the judgment of the Supreme Court in the case of *Hendrick Appuhamy vs. John Appuhamy (supra),* where Sansoni, C.J. concluded, after a consideration of the provisions of the now-repealed Paddy Lands Act No. 1 of 1958, which was the earliest enactment in the sphere of agricultural lands legislation, and the precursor to the aforementioned Agrarian Services Act No. 58 of 1979 now in force, that, as the said Paddy Lands Act creates new rights and obligations and also provides the sole machinery to which a landlord must resort if he wants to have his tenant-cultivator evicted or his paddy field property,

cultivated, no other remedy was availabe to the landlord since the said Act was passed, and that the said Act takes away the jurisdiction of the Courts by necessary implication. No submissions have been addressed to this Court against the correctness of the view so expressed in the said judgment. The view so expressed in that judgment in respect of the said Paddy Lands Act would hold good even in regard to the Act now in force, the Agrarian Services Act No. 58 of 1979 referred to earlier. Any dispute in respect of a paddy-field arising between a landlord and a tenant, as defined by the provisions of the said Act, and in relation to which express provision is made therein will be regulated by the provisions so contained in the said Act; and any such dispute would have to be determined in the manner set out in the said Act. Such dispute cannot be brought before and sought to be determined by a court of law.

This principle will apply only if the dispute, which arises in respect of a paddy-field, is a dispute between a person, who is a landlord within the meaning of the said law, and a person, who is a tenant-cultivator within the meaning of the self-same Act. The two parties to the dispute should each bear the character which the Act requires that each should in fact and in law bear and possess, in order to enable one to enforce the rights the Act gives him against the other, and to subject the other to perform the obligations which the Act compels him to perform. If one or the other does not in fact and in law possess the character each is so required to have and possess, then the provisions of this law cannot be availed of by one, and be imposed against the other.

The facts and circumstances upon which the decision in *Hendrick Appuhamy vs. John Appuhamy (supra)* was based were: the plaintiff was the owner of a paddy field in an area in which the Paddy Lands Act of 1958 was in force: the defendant was his tenant-cultivator: the plaintiff complained to the Cultivation Committee of the area against the defendant under Sec. 14 of the said Act: the plaintiff, without obtaininig a decision from the Cultivation Committee, filed an action in the District Court against the defendant to have the defendant ejected on the ground that he, the defendant, had failed to maintain it diligently. Sec 14 of the said Act enabled a landlord upon an application to the Cultivation Committee, to become an owner-cultivator of an extent of paddy land in respect of which there

is a tenant-cultivator. This section therefore laid down the procedure by which a landlord could recover an extent of paddy-land which was in the possession of his tenant-cultivator. It was upon these facts and circumstances that Sansoni, C.J., held that the District Court had no jurisdiction to entertain and proceed with the plaintiff's action and the only remedy open to the plaintiff was to seek the relief which the provisions of the said Act provided. In that case the plaintiff clearly admitted that he was the landlord of the said paddy-field and that the defendant, whom he was bringing before the District Court, was his tenant-cultivator in respect of the said paddy-field. The plaint was clearly and categorically presented on the basis that he was the landlord and the defendant the tenant-cultivator, within the meaning of the said Paddy Lands Act, in respect of the paddy-land which was the subject-matter of the action and to which the provisions of the said Act applied. There was no dispute raised or challenge made in respect of the relationship between the plaintiff and the defendant. The relationship of the landlord and tenant-cultivator, which was the prerequisite to the application of the provisions of the Paddy Lands Act, was accepted and admitted as existing between the plaintiff and the defendant.

The Plaintiff-Appellant in this case has, however, come before the District Court alleging that the 1st Defendant-Respondent is a trespasser; and although he, the Plaintiff-Appellant, avers that he is the landlord of the paddy-field, which is the subject-matter of the action, he does not accept the 1st Defendant-Appellant as the tenant-cultivator of the said paddy-field. In fact he expressly denies that the 1st Defendant-Appellant is the tenant-cultivator. He avers that, although the 1st Defendant-Appellant has had himself registered as a tenant-cultivator, such registration has been obtained fraudulently. There is thus no acceptance by the Plaintiff-Appellant of one of the essential basic facts and circumstances, the clear and undisputed existence and acceptance of all of which alone would bring into operation the statutory provisions of the relevant agricultural-lands law, the Agrarian Services Act No. 59 of 1979.

The District Court of Homagama had, in this case, jurisdiction over the parties named as the plaintiff and the defendant. It also had territorial jurisdiction over the subject-matter in regard to which relief was sought. The plaint presented to the District Court of Homagama in this case alleged the existence of all the relevant facts and

circumstances necessary for the conferment of authority on the said District Court to entertain and proceed with the claim for relief. The District Court of Homagama thereupon became vested with the necessary jurisdiction irrespective of whether or not the facts and circumstances so alleged were, in fact, true.

Whilst discussing the question of when and how jurisdiction is conferred upon a court, Nagalingam, J. has, in the case of *Marjan vs. Burah 51 NLR 34 at 38,* quoted with approval the words of *Hukum Chand* 1894 edt. p. 240, that jurisdiction "does not depend upon facts or the actual existence of matters or things but upon the allegations made concerning them"; and also Hukum Chand's citation of the passage from Van Fleet : "If certain matters and things are alleged to be true and relief prayed which the tribunal has power to grant if true that gives it jurisdiction over the proceedings .... A great deal of trouble had arisen from the mistaken conception that jurisdiction depends upon facts or the actual existence of matters and things instead of upon allegations made concerning them". – *vide also: Abdulla vs. Menika, 23 NLR 301 at 305.*

Sec. 45(3) of the aforesaid Agrarian Services Act of 1979 provided that an entry made in the register, maintained in terms of sub-section (1) of the said section 45, is "prima facie evidence of the facts stated therein". The effect of an entry being declared to be "prima facie evidence" of the facts set out therein is that it is "evidence which appears to be sufficient to establish the fact unless rebutted or overcome by other evidence", and "is not conclusive" – *Sarker, Evidence, 10 edt. p. 27:* "it is evidence which if not balanced or outweighed by other evidence will suffice to establish a particular contention" – *Halsbury 4th edt, Vol. 17, p 22, Sec. 28.* A similar view was expressed by Drieberg, J., in the case of *Velupillai vs. Sidembram 31 NLR 99:*

> "Prima facie proof" in effect means nothing more than sufficient proof – proof which should be accepted if there is nothing established to the contrary; but it must be what the law recognises as proof, that is to say, it must be something which a prudent man in the circumstances of the particular case ought to act upon – S.3, Evidence Ordinance".

Having quoted with approval the citations referred to above, Samarakoon C.J., in *Undugoda Jinawansa Thero vs. Yatawara Piyaratne Thero, S.C. Appln. 46/81, S.C.M. 5.4.82* stated, in regard

to the evidentiary value of an item of evidence which is considered "prima facie evidence", thus:

> "It is only a starting point and by no means an end to the matter. Its evidentiary value can be lost by contrary evidence in rebuttal...If after contrary evidence has been led the scales are evenly balanced or tilted in favour of the opposing evidence that which initially stood as prima facie evidence is rebutted and is no longer of any value.....Evidence in rebuttal may be either oral or documentary or both....The Register is not the only evidence".

The entry in the said Register would not, therefore, prevent the Plaintiff-Appellant from leading evidence to the contrary. It would be open to the Plaintiff-Appellant to satisfy the District Court – if the District Court has otherwise jurisdiction to adjudicate upon the Plaintiff's claim – by evidence that the 1st Defendant-Appellant is not, despite his registration as such, in law a "tenant-cultivator" as set out in the aforesaid Act.

The plaintiff, who sued for a declaration of title and ejectment from two lands in the case of *Dodanwela vs. Bandiya, 72 NLR p. 10* was met with the plea: that the said lands were paddy-lands: that the defendant was the cultivator of the said lands : that the defendant could not be ejected by reason of the provisions of the Paddy Lands Act. The District Court went into the question whether or not the defendant was the cultivator of the two paddy-fields; and held that, whilst the defendant was the cultivator of land No. 1, he was not so in regard to land No.2. On the basis of such finding, the District Court entered judgment in favour of the plaintiff, but only in regard to land No.2. In appeal, the Supreme Court held that the defendant had failed to establish that he was the cultivator, within the meaning of Sec 63 of the Paddy Lands Act, of even land No. 1; and judgment was accordingly entered in favour of the plaintiff in regard to both lands. The plaintiff in that case too did not accept the defendant as the cultivator of the said paddy-lands. He averred that the defendant was a tresspasser. Even though the defendant invoked the provisions of the Paddy Lands Act, yet, the courts did go into the question whether the defendant was in law the "cultivator" within the meaning of the Paddy Lands Act, as claimed by the defendant, or whether he was just a tresspasser as maintained by the plaintiff.

In this view of the matter I am of opinion that, having regard to the averments in the plaint filed in this case in the District Court of Homagama, the District Court of Homagama had jurisdiction to have entertained the said plaint, and to proceed to the trial of the issues arising from the pleadings filed by the Plaintiff-Appellant and the 1st Defendant-Respondent, and also has jurisdiction to go into the question whether the 1st Defendant-Respondent is in fact and in law a tenant-cultivator as contemplated by the provisions of the said Agrarian Service Act No. 58 of 1979.

If, during the course of the trial, however, the learned District Judge is satisfied that the 1st Defendant-Respondent is, in fact and in law, the tenant-cultivator, as defined in the said Agrarian Services Act 58 of 1979, of the paddy-field which is the subject-matter of these proceedings, then the learned District Judge will have no power to continue the proceedings any further. The learned District Judge will then, in view of such finding, have no jurisdiction to proceed any further with the adjudication of the other issues submitted for his decision. The Plaintiff-Appellant's claim for ejectment of the 1st Defendant-Respondent from the said paddy-field would thereafter have to be determined in the manner set out in the aforesaid Agrarian Services Act No. 58 of 1979.

The Plaintiff-Appellant's appeal is, accordingly, allowed. The judgment of the Court of Appeal is set aside; and the Order of the learned District Judge – that the District Court has jurisdiction to determine, in these proceedings, whether or not the 1st Defendant-Respondent is, in law, the tenant-cultivator of the said paddy-field – is affirmed. The Record is directed to be sent back to the District Court of Homagama for the District Court to proceed with the trial as indicated above.

The 1st Defendant-Respondent is directed to pay the Plaintiff-Appellant the costs of appeal, of both this Court of the Court of Appeal. The costs of the proceedings held so far in the District Court are to be costs in the cause.

SHARVANANDA, C.J. – I agree.

WANASUNDERA, J. – I agree.