

1963

Present : Abeyesundere, J.

H. R. KAROLIS and another, Petitioners, *and* ASSISTANT COMMISSIONER OF AGRARIAN SERVICES, Respondent

S. C. 96 of 1963—Application for Revision in M. C. Hambantota, 40,353

Paddy land—Eviction therefrom—Procedure—Form of summons—Paddy Lands Act, No. 1 of 1958, s. 21 (1) (2) (3).

The failure of a person to appear in Court upon service of a summons which is not in conformity with the provisions of sub-section (2) of section 21 of the Paddy Lands Act cannot be the basis of an order of eviction under sub-section (3).

APPPLICATION to revise an order of the Magistrate's Court, Hambantota.

E. A. G. de Silva, for the Respondents-Petitioners.

A. A. de Silva, Crown Counsel, for the Petitioner-Respondent.

April 9, 1963. ABEYESUNDERE, J.—

The petitioners pray that this Court, by way of revision, be pleased to set aside the order made by the learned Magistrate of Hambantota, under sub-section (3) of section 21 of the Paddy Lands Act, No. 1 of 1958, directing them to be evicted from a paddy land called "Katukumbura" situated in the Hambantota District.

The order under that sub-section has been made on the basis that summons under sub-section (2) of the said Section 21 had been served on the petitioners and that they had failed to appear on the date specified in the summons. The petitioners averred in their affidavit that the summons had been served not on them but on some other persons residing in their houses on the 29th and 30th January 1963. The Process Server has averred in his affidavit that the summons was served on the petitioners. I have no reason to disbelieve the statement of the Process Server that summons had been served on the petitioners. The summons in this case is, however, not in accordance with paragraph (a) of sub-section (2) of the said Section 21. According to that paragraph the summons should require the person named therein to appear and show cause, on a date specified in the summons, why he should not be evicted from the paddy lands specified therein. The summons in this case stated that the person summoned had failed to deliver possession of the paddy land called "Katukumbura" to K. D. Karolis of Mirijjawala, and that he has thereby "committed an offence punishable under Section 21 of the P. L. A.", and required him to appear in person with his witnesses on 1.2.1963 at 9 o'clock in the forenoon, at the Magistrate's Court of Hambantota to answer to the said complaint, and to be further dealt with according to law. The petitioners were, therefore, not summoned to appear and show cause why they should not be evicted from the paddy land called "Katukumbura".

I, therefore, hold that the summons in this case is not according to law. I set aside the order of eviction made by the learned Magistrate under sub-section (3) of the said Section 21 and order that the application of the Assistant Commissioner of Agrarian Services, Hambantota, made on the 17th December 1962, under sub-section (1) of the said Section 21 be dealt with *de novo* in accordance with the provisions of that Section.

Order set aside.