ALLIS
v.
SENEVIRATNE AND OTHERS

COURT OF APPEAL
A.DE.Z GUNAWARDANA, J.
C.A. No. 430/83
A. T. No. KGL/4993
OCTOBER 10 AND 17, 1989

Agrarian Services Act, No. 58 of 1979 ss. 2(1), 2(2) and 5(3) – Requirement that the Asst. Commissioner should make the consequential order upon a finding of eviction of a tenant-cultivator.

After inquiry the Asst. Commissioner of Agrarian Services found that the appellant had been cultivating the field in question from 1975 onwards as joint cultivator with the 1st respondent and had been evicted. However, the Asst. Commissioner has dismissed the application of the appellant on the basis that although the appellant was only a joint-tenant-cultivator from 1975 onwards, the appellant has prayed that he be declared entitled to be the sole-tenant-cultivator of the whole field. The Asst. Commissioner has held that such a declaration would affect the rights of the other joint cultivator, 1st respondent, Seneviratne and therefore the appellant was not entitled to the relief he claimed.

Held –

(1) Section 2(1) and section 2(2) of the Agrarian Services Act recognise the concepts of sole-tenant-cultivator and joint-tenant-cultivator. However section 5(3) does not make a distinction between sole-tenant-cultivator and joint-tenant-cultivator. When a joint-tenant-cultivator had been evicted he would be as much entitled to be restored to his cultivation rights as a sole-tenant-cultivator.

(2) The fact that the appellant had asked for a larger relief than what he is entitled to should not prevent him from getting the lesser relief that he is entitled to.

APPEAL from order of the Assistant Commissioner of Agrarian Services

Gamini Jayasinghe for the Appellant

Respondents absent and unrepresented.

October 17,1989

A. DE. Z GUNAWARDANA, J.

In this case W. Allis the appellant, who was a tenant cultivator, of the field named Meekanuwita, in extent 1A OR 20P, made an application to the Asst. Commissioner of Agrarian Services, Kegalle, on 27.5.1977 stating that he was evicted from the said field on 8.4.1977, and an inquiry was held by the Assistant Commissioner. The respondents to the application were M.R. Seneviratne, who had been cultivating this field along with the appellant from 1975 - 1977,

and his brothers Kiri Banda and Punchi Banda and sister Bandara Menike. The original first respondent to this application was, the mother of the respondents, G.R. Loku Menike, and upon her death Punchi Banda was substituted in her place.

When this matter came up for inquiry, the appellant, Allis, gave evidence and took up the position that he was the sole tenant cultivator of this field from 1960-1975. He stated that in 1975 under pressure from Arachchi Ukku Banda, the brother of Loku Menike, he was forced to take on the respondent Seneviratne also as a joint tenant cultivator. However in re-examination he had taken up the position that Seneviratne came and helped him because of the influence of the Arachchi, and that his claim is to be the tenant cultivator of the whole field. At the conclusion of his evidence, he had further added that he is not willing to share the field with Seneviratne and that, what he is asking for is to be declared entitled to be the tenant cultivator of the whole field. He produced documents marked P1 to P9 to prove his rights relating to his claim for tenant cultivation rights. The documents P9 particularly, showed that his name had been registered from 1971-1975 as sole tenant cultivator and as joint tenant-cultivator with Seneviratne from 1975-1977. He called several other witnesses who supported his claim that he was the tenant cultivator of this field.

The 4th respondent Punchi Banda who gave evidence on behalf of the respondents, took up the position that Allis was employed as a paid worker, to work in this field. He was not specific about the date on which Allis came to work in this field. He knew about these matters only from around 1970. He also said that after Seneviratene, his brother, took over the field in 1975 or thereabout, Allis was a paid-worker under Seneviratne. However in cross-examination he has admitted that Allis had on several occasions taken produce from this field to his house and handed them over to his mother. Further more he had seen Allis working in this field and had seen him doing various acts relating to the cultivation of this field.

At the conclusion of inquiry the Asst. Commissioner had rejected the evidence of the respondents that appellant did not cultivate this field and has held that appellant has cultivated the field. He has accepted the documents P1 to P9 as proof of the fact that appellant has been cultivating this field. The Asst. Commissioner also has held that in 1975 Allis ceased to be the sole tenant-cultivator of this field

and that he had become a joint-tenant-cultivator of the field with Seneviratne from 1975 onwards. However he has dismissed the application of the appellant on the basis that although the appellant was only a joint-tenant-cultivator from 1975 onwards he had required that he be declared entitle to be the sole-tanant-cultivator of the whole field. The Asst. Commissioner has taken up the position that such a finding would affect the rights of Seneviratne and therefore Allis was not entitled to the relief that he claimed.

The learned Counsel for the appellant submitted that the Asst. Commissioner has found that the appellant is a joint-tenant-cultivator and that he had been evicted from the said field. In the circumstances he submitted that the learned Commissioner should have made the consequential order that the appellant be restored to his tenant cultivation rights, jointly with Seneviratne.

Section 2(1) of the Agrarian Services Act specifically sets out the conditions when a person is said to be a sole-tenant-cultivator. Section 2(2) specifies when a person is said to be a joint-tenant-cultivator. Therefore it is clear that the statute recognises the concepts of sole-tenant-cultivators and joint-tenant-cultivators. However, section 5(3) does not make a distinction between a sole tenant-cultivator and joint-tenant-cultivator. When a joint-tenant-cultivator had been evicted he would be as much entitled to be restored to his cultivation rights as a sole-tenant-cultivator since the statute recognises such a distinction.

The learned Counsel for the appellant does not dispute the finding of the Asst. Commissioner that the appellant is a joint-tenant-cultivator with Seneviratne.

The fact that the appellant has asked for a larger relief than he is entitled to, should not in my view prevent him from getting the lesser relief which he is entitled to. In the circumstances, it is appropriate to give effect to the said finding of the Asst. Commissioner and restore the tenant cultivation rights to the appellant in common with Seneviratne.

Accordingly this Court makes order setting aside the order of the Asst. Commissioner, dismissing the application of the appellant.

It is hereby ordered that the appellant W. Allis be restored to his tenant cultivator's rights in respect of the said field in common with the respondent M.R. Seneviratne. Appeal is allowed, no costs.

Appeal allowed.