

1960 *Present* : Basnayake, C.J., and H. N. G. Fernando, J.

S. GUNAWARDENA and another, Appellants, *and*
R. K. A. ROSALIN, Respondent

S. C. 227—D. C. Tangalle sitting at Hambantota, 697

Land Development Ordinance (Cap. 320)—Succession on death of grantee—Curators of minors—Sections 68 (1), 70, 76 (1).

A grantee of land under the Land Development Ordinance nominated his sister, the plaintiff, as life-holder. He died in 1951 leaving his widow (the 1st defendant) and their son (a minor) who was nominated under the Ordinance as the successor to the land by a writing dated 17th June 1948. The plaintiff alleged that the 1st defendant was in unlawful and wrongful possession of the land since the death of the grantee and she claimed the value of the produce. The plaintiff had never enjoyed the produce of the land or entered into occupation.

Held, that as the plaintiff did not enter into possession within the period of six months prescribed in section 68 (1) of the Land Development Ordinance the successor succeeded to the holding by virtue of section 70.

APPPEAL from a judgement of the District Court, Tangalle, sitting at Hambantota.

Stanley Perera, for Defendants-Appellants.

R. Manikkavasagar, with *K. Charavanamuttu*, for Plaintiff- Respondent.

February 19, 1960. BASNAYAKE, C.J.—

The plaintiff Kumarapperuma Arachchige Rosalin of Uduwila was nominated by her brother Kumarapperuma Arachchige Barnis who was grantee on a grant under the Land Development Ordinance as life-holder of a land known as Molakepu patana situated in part of the village of Wirawila in the Vidane Arachchi's Division of Wirawila in Magam Pattuwa of the Hambantota District, depicted as lot No. 209A in F. I. S. Plan No. 1 in Field Sheet No. 2.

He died in 1951 leaving his widow Sita Gunawardene the 1st defendant, and their Son Kumarapperuma Arachchige Charlie who was nominated under that Ordinance as the successor to the land by a writing dated 17th June 1948. It would appear that the widow of the deceased Barnis who after his death married M. S. Andiris Appuhamy, the 2nd defendant, continued to take the produce of the land and was doing so at the date of this action in November, 1957. The plaintiff alleged that the 1st defendant and her husband were in unlawful and wrongful possession of the land since the death of Barnis and she claimed the value of the produce. The learned District Judge gave judgment for the plaintiff on the ground that she had been kept out of the land forcibly. The evidence does not support the finding of the learned Judge nor does it show that the plaintiff ever enjoyed the produce of the land or entered into occupation of it.

Section 68 (1) of the Land Development Ordinance provides that a nominated life-holder fails to succeed if he refuses to succeed or does not enter into possession of the holding within a period of six months reckoned from the date of the death of the owner of the holding. As the plaintiff did not enter into possession within the period prescribed in that provision she failed to succeed and the successor succeeded to the holding by virtue of section 70, which declares that if the nominated life-holder fails to succeed, the successor shall succeed to the holding. It would appear therefore that Charlie is now entitled to the holding. He being a minor it must be presumed that the 1st defendant, his mother, managed it for his benefit after he succeeded to it. It would appear from paragraph 6 of the answer of the defendants that on a habeas corpus application made for the custody of the person of Charlie, this Court directed the 1st defendant to take steps in terms of Chapter 40 of the Civil Procedure Code to deposit in court periodically the income from the holding, and in pursuance of that order the 1st defendant has instituted proceedings in the District Court of Tangalle sitting at Hambantota. Section 76 (1) of the Land Development Ordinance provides that in the absence of a curator appointed by the Court, the Government Agent should exercise his powers in the instant case because steps have already been taken for the appointment of a curator, who would be bound by section 588 (2) of the Civil Procedure Code to file an account of the property in his charge in the prescribed manner. The plaintiff must therefore fail in this action.

We accordingly allow the appeal, set aside the judgment of the learned District Judge and dismiss the plaintiff's action. The appellant is entitled to costs both here and below.

H. N. G. FERNANDC, J.—I agree.

Appeal allowed.

