

1963

Present : H. N. G. Fernando, J.

NORTON PERERA, Petitioner, and THE ASSISTANT
COMMISSIONER OF AGRARIAN SERVICES,
KEGALLE. Respondent

*S. C. 427/63—Application for restitutio-in-integrum in
M. C. Kegalle, 43934*

*Paddy land—Eviction order—Absence of party on date of inquiry—Procedure—
Paddy Lands Act No. 1 of 1958, s. 21 (4)—Civil Procedure Code, s. 86.*

Where, on the date fixed under section 21 (4) of the Paddy Lands Act for inquiry against the issue of an order of eviction, the person sought to be evicted is absent, the Magistrate should, in the absence of specific provision for the situation, enter an order *nisi* which he should deal with in the same way as would a civil Court under section 86 of the Civil Procedure Code.

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

D. R. Wijegoonewardane, for the petitioner.

N. B. D. S. Wijesekera, Crown Counsel, for the respondent.

November 27, 1963. H. N. G. FERNANDO, J.—

This is an application in revision made in connection with an order of eviction made by a Magistrate under Section 21 of the Paddy Lands Act No. 1 of 1958. The procedure contemplated in Section 21 is that an order made by a cultivation committee or the commissioner to vacate paddy land is reported to the Magistrate's Court. The Magistrate thereupon issues summons to the person named in the report to show cause why he should not be evicted. Sub-section 3 provides that if the person fails to appear on the date specified in the summons or appears and informs the Court that he has no cause to show, the Court will make an order of eviction against him. Sub-section 4 provides that when the person appears in answer to the summons and states that he has cause to show, the matter is set down for inquiry. After the inquiry, the Magistrate can make an order for eviction which is subject to appeal to this Court.

In the present case, the petitioner appeared in answer to the summons and stated that he had cause to show and the matter was fixed for inquiry. The inquiry was postponed more than once but finally the case was called on the 22nd August, 1963 when the respondent was absent. The learned Magistrate, noting that there was no excuse before the Court, allowed the substantive application for eviction.

There is no provision in Section 21 which expressly deals with the situation which arose in this case, namely, the absence of the petitioner on the inquiry date. The section neither authorises the order of eviction to be made forthwith in such a situation nor does it provide for any other procedure to be followed.

It seems to me that although the Act provides for the order of eviction to be made by a Magistrate, the jurisdiction is a special one and is more of a civil nature. In the absence of specific provision for this situation, I think the Magistrate should have followed the ordinary procedure of a civil court which is to make an order *nisi* against which the person concerned could show cause if he is able to excuse, to the satisfaction of the Magistrate, his default of appearance. In considering whether the order should or should not be made absolute, the Magistrate should deal with the matter in the same way as would a civil Court under Section 86 of the Civil Procedure Code.

I set aside *pro forma* the order made by the learned Magistrate and direct him to make an order *nisi* in accordance with the views set out in this judgment.

Order set aside pro forma.

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