

1961

Present : Sansoni, J.

COMMISSIONER OF AGRARIAN SERVICES, Appellant, *and*
V. KUMARASAMY, Respondent

S. C. 672—M. C. Trincomalee, 24150

Paddy Lands Act, No. 1 of 1958—Unlawful eviction of tenant cultivator—Jurisdiction of Magistrate's Court in respect of such offence—"Tenant cultivator"—Sections 3 (1), 4 (5), 4 (9), 21 (1), 51, 63—Criminal Procedure Code, ss. 9, 135.

In a prosecution for the wrongful eviction of a tenant cultivator in breach of section 4 (5) of the Paddy Lands Act, No. 1 of 1958—

Held, (i) that a Magistrate's Court has jurisdiction under sections 9 and 135 of the Criminal Procedure Code to try an offence committed in breach of section 4 (5) of the Paddy Lands Act.

(ii) that where the rent for the letting of an extent of paddy land consists of paddy and not of money, the lessee would not be a tenant cultivator within the meaning of section 3 (1) of the Paddy Lands Act unless the paddy given as rent is a share of the produce from the extent of the land let.

APPEAL from a judgment of the Magistrate's Court, Trincomalee.

V. S. A. Pullenayegum, Crown Counsel, for the Complainant-Appellant.

S. Sharvananda, for the Accused-Respondent.

Cur. adv. vult.

February 1, 1961. SANSONI, J.—

This is an appeal by the Attorney-General from an acquittal. The charge on which the case went to trial reads :

“ You are hereby charged, that you did, within the jurisdiction of this Court, being the landlord of an extent of paddy land called Pattanai-pathai situated at Thiriyai in the Administrative District of Trincomalee in which Administrative District the provisions of the Paddy Lands Act, No. 1 of 1958 that come into operation on a date appointed under sub-section 1 of section 2 have not been brought into operation did, on or about the 20th day of August, 1958, at Thiriyai, evict from the said extent of land without the written sanction of the Commissioner of Agrarian Services, one S. Ponnudurai who would be the tenant cultivator of the said extent of land if those provisions were in operation in the said Administrative District in breach of section 4 (5) of the Paddy Lands Act No. 1 of 1958 and did thereby commit an offence punishable under section 4 (9) of the said Act.”

The learned Magistrate found, on the facts, that the charge had been proved, but he held that he had no jurisdiction to hear the case, although this point was not raised by the defence and was therefore not met by the prosecution at the trial. His reason was that neither section 4 (5) nor section 4 (9) of the Act provides which Magistrate's Court should have jurisdiction in respect of such an offence. He compared section 4 with section 21 (1) which empowers a Magistrate's Court “ within whose jurisdiction such extent wholly or mainly lies ”, to issue an order of eviction. The reason for such a provision in section 21 (1) obviously is that unless a Magistrate's Court is empowered to issue an order of eviction, it would have no jurisdiction to do so under the Criminal Procedure Code. But in view of sections 9 and 135 of that Code which confer jurisdiction on a Magistrate's Court to try all prosecutions for offences committed within its local jurisdiction, there was no need for further provision to be made in this behalf in the Act. I find that the learned Magistrate has referred to section 9 in his order, and this should have been sufficient authority for him to hold that he had jurisdiction in this case.

Another ground on which he held against the prosecution was that it had failed to mark in evidence or recite in the charge the Gazette which brought into operation section 51 of the Act in respect of the Trincomalee district. Section 51 provides for the appointment of Deputy and Assistant Commissioners of Agrarian Services and other officers and servants for the purposes of the Act : it has nothing to do with the creation of the

offence charged. The cases relied on by the learned Magistrate, which require that when a charge is laid under a rule, regulation or by-law which is required by law to be published in the Gazette, the Gazette should be referred to in the charge, have no application to this case. The learned Magistrate apparently thought that the evidence of the Assistant Commissioner of Agrarian Services, who stated that the Act had not been brought into operation in that district, could not be acted on unless he had the status of that office and that status could not be proved unless the Government Gazette bringing section 51 into operation in that district was mentioned in the charge. Nobody questioned the status of the witness, who said that he was duly appointed. But in any case there was no need for him to have a particular status to give such evidence: if the evidence he gave was believed, nothing more was necessary. I do not see how a Gazette dealing with the matter of his appointment can find a place in the charge.

Although the grounds on which the acquittal was based are therefore wrong, I have still to decide whether the order should be set aside. Mr. Sharvananda urged that the prosecution had failed to prove that the person evicted came within the expression "tenant cultivator". Section 3 (1) provides that a person shall be the tenant cultivator of an extent of paddy land when he is the cultivator of an extent let to him under any oral or written agreement, and if he is a citizen of Ceylon. The point stressed on behalf of the accused is that the word "let" when used with reference to any extent of paddy land has been defined in section 63 of the Act. It means "to permit any person, under an oral or a written agreement, to occupy and use such extent in consideration of the performance of any service by him or the payment of rent consisting of a sum of money or a share of the produce from such extent."

In this case, the alleged tenant cultivator referred, in the course of his evidence, to the payment of "lease money". He then produced as P2 what he called a receipt for the lease money. A year's "lease amount" has been described in that document as six avanams of paddy. The document on which the land was leased to him has also been produced, but it does not specify what the consideration or the rent for the letting consisted of. It is not clear to me, from the evidence led by the prosecution, whether the consideration consisted of money or of paddy. If it was the latter, it would not be a letting under the Act unless that paddy was a share of the produce from the extent of land let.

Since the learned Magistrate was satisfied that the evidence proved the charge, what appears to me to be ambiguous was probably not so to him. But the evidence on record is not as clear as it should be, as to what the terms of the agreement were. This appears to me to be a case where a fresh investigation of the facts should be held.

In the circumstances I set aside the order of acquittal and send the case back for a fresh trial by another Magistrate.

Order of acquittal set aside