

IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

S.C. Appeal No. 139/2013
SC/HCCA/LA/11/2013
CP/HCCA/Kandy/LA/07/2011
DC Matale Case No. 4601/L

In the matter of an Appeal with leave of the Supreme Court first had and obtained in terms of Section 5C of the High Court of the Provinces (Special Provisions) (Amendment) Act No. 54 of 2006 read with Article 127 and 128 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Mohamed Wahid
'Rock View', 9th Mile Post
Alawatugoda.

Probate holder of late Muhandiramge Aboobakkar Lebbe Mohamed Yusoof of 9th Mile Post,
Alawatugoda.

PLAINTIFF

Vs.

Rev. Wattegama Sumana Tissa
Sri Wijayaramaya, Kuriwela,
Ukuwela. **(Deceased)**

DEFENDANT

Rev. Wattegama Siri Sumana
Elwela Temple,
Elwela. **(Deceased)**

SUBSTITUTED-DEFENDANT

Rev. Kalundewe Chandrasiri
Elwela Temple,
Elwela.

SUBSTITUTED DEFENDANT

AND

Rev. Kalundewe Chandrasiri
Elwela Temple,
Elwela.

SUBSTITUTED-DEFENDANT-PETITIONER

Vs.

Mohamed Wahid
'Rock View', 9th Mile Post
Alawatugoda.

Probate holder of late Muhandiramge
Aboobakkar Lebbe Mohamed Yusoof of
9th Mile Post,
Alawatugoda.

PLAINTIFF-RESPONDENT

AND NOW

Mohamed Wahid
'Rock View', 9th Mile Post
Alawatugoda.

Probate holder of late Muhandiramge
Aboobakkar Lebbe Mohamed Yusoof of
9th Mile Post,
Alawatugoda.

PLAINTIFF-RESPONDENT-PETITIONER

Vs.

Rev. Kalundewe Chandrasiri
Elwela Temple,
Elwela.

**SUBSTITUTED-DEFENDANT-
PETITIONER-RESPONDENT**

BEFORE: Sisira J. de Abrew J.
Anil Gooneratne J. &
K. T. Chitrasiri J.

COUNSEL: Shabry Haleemdeen with Srimal Seneviratne
for Plaintiff-Respondent-Appellant

Kushan de Alwis P.C. with Rajiv Wijesinghe and B. Gamaarachchi
For the Substituted-Defendant-Petitioner-Respondent

ARGUED ON: 25.01.2017

DECIDED ON: 07.03.2017

GOONERATNE J.

This was an action filed in the District Court, Matale for a declaration of title and eviction of the Defendant-Petitioner-Respondent. Plaintiff was filed on 18.12.1992. Answer having being filed by the Defendant-Petitioner-Respondent, and thereafter the Plaintiff moved to file amended plaintiff for which the Defendant objected. However learned District Judge allowed the amended

plaint to be filed. Case proceeded to trial, and after trial action was dismissed. An appeal was preferred by the Appellant to the Civil Appellate High Court of Kandy. The Civil Appellate Court, set aside the Judgment of the District Judge and made order to hold a trial De Novo. Respondent appealed to the Supreme Court having sought Leave to Appeal which was allowed, and the Supreme Court by Order of 16.03.2008 dismissed the appeal of the Respondent.

Trial De Novo commenced on 21.10.2010 by raising 21 issues and issue Nos. 13, 14 & 15 were tried as preliminary issues. Preliminary issues relate to the date of filing plaint, (18.12.92) whether Plaintiff is entitled to rights on the amended plaint based on the stator determination published on 11.03.1994 as per the Land Reform Law, and the question of Plaintiff maintaining the action. Issues were answered in favour of the Appellate by the District Court. Being aggrieved by the judgment of the District Court, Respondent appealed to the Civil Appeal High Court, Kandy and the Civil Appellate High Court, allowed the appeal of the Defendant-Petitioner-Respondent and held that Plaintiff cannot maintain the action.

This court on or about 14.01.2013 granted Leave to Appeal to the Plaintiff-Respondent-Petitioner from the above order on the following questions of law.

16. (c) Have their Lordships in the Civil Appellate High Court erred in law in not appreciating that by operation of law that the said Usoof became the Statutory Lessee of the land owned by him, with the right to make a

declaration as to which portion of the land owned by him, he wishes to retain?

16 (f) Have their Lordships in the Civil Appellate High Court failed to appreciate that the Petitioner could proceed with the case to vindicate his title to the land which had been confirmed by the statutory determination?

In this case, according to the Land Reform Law, land in excess of the land ceiling as claimed by the Appellant vested in the Land Reform Commission. In brief the facts of this case are as follows. By a deed of transfer bearing No. 234 of 15.07.54 two persons namely Mohamed Ibrahim and Abdul Kapur transferred the property, the subject matter of this action to Abdul Hameed and Mohamed Yusoof (deceased). The Appellant is the probate holder or executor of late Mohamed Yusoof. As both Abdul Hameed and late Mohamed Yusoof owned more than 50 acres of land, by operation of law, according to provisions of the Land Reform Law, land which were co-owned in excess vested in the Land Reform Commission.

The scheme of the above law is that in terms of Section 5 of the said law after the date of commencement of this law, any person becomes the owner of agricultural land in excess of the ceiling, any such land owned by such person in excess shall as from that date deemed to vest in the commission and be held by that person under a statutory lease from the Land Reform Commission

Section 6 of the law states that when land is vested in the commission under the Land Reform Law, such vesting shall have the effect of giving the land vested in the commission absolute title to the commission, free from all encumbrances.

The above section of the law are plain and simple and needs no further interpretation to understand its contents. Plaintiff is claiming a declaration of title to the land in question. As such the important question to be decided is whether the Plaintiff-Appellant had title to the property when it was released to him and when action was filed in the District Court of Matale. To enable the Plaintiff to file a rei vindicatio action Plaintiff himself must have had title as observed by the learned High Court Judge. The material made available to this court no doubt suggest that by the time action was filed in the District Court, late Mohamed Yusoof in whose favour a declaration of title is sought had no title to the property in dispute. By that time property in dispute had vested in the Land Reform Commission. Action was instituted on 18.12.1992. Land Reform Commission published the statutory determination on 11.03.1994. (undisputed facts).

Section 18 of the law provides that every person who became a statutory lessee, within 1 month of publication in the Gazette by the

commission, call upon the statutory lessee to make a statutory declaration in a prescribed form of the total extent of the agriculture land so held by him on such lease. The next two sections viz. Sections 19 and 20 of the Land Reform Law are the important provisions which would have a direct bearing to the case in hand.

19 (1) reads thus:

The following provisions shall apply on the receipt by the Commission of a statutory declaration made under section 18 –

- (a) The Commission shall, as soon as practicable, make a determination, in this Law referred to as a “statutory determination”, specifying the portion or portions of the agricultural land owned by the statutory lessee which he shall be allowed to retain. In making such determination the Commission shall take into consideration the preference or preferences, if any, expressed by such lessee in the declaration as to the portion or portions of such land that he may be allowed to retain.
- (b) The Commission shall publish the statutory determination in the Gazette and shall also send a copy thereof to such lessee by registered letter through the post. Such determination shall be final and conclusive, and shall not be called in question in any court, whether by way of writ or otherwise.

Section 20 reads thus:

Every statutory determination published in the Gazette under section 19 shall come into operation on the date of such publication and the Commission shall have no right, title or interest in the agricultural land specified in the statutory determination from the date of such publication.

The learned counsel for the Appellant took some pains to submit to us, that what is relevant is the date on which the commission decided to make

a statutory determination, and for that purpose it would be necessary to have lead evidence in the District Court and sought to demonstrate that this question cannot be decided in the way “trial Judge permitted preliminary issues to be raised and ruled on same. However learned President’s Counsel for the Respondent opposed the above submissions of learned counsel for the Appellant and submitted to this court that the above Sections 19 and 20 of the said law need no further explanation and what is material is the date of publication of the Gazette as provided by Section 20 of the said law.

The Learned President’s Counsel invited this court to consider the following authorities and submitted to court that the law is settled on this issue, which had been considered even by the learned High Court Judge. In *Gangegoda Appuhamillage Don Edmund Ananda Seneviratne, Krishnajeena Seneviratne Vs. Rohan Tissa Anthony Weeratunga, Tissa Indika Weeratunga* S.C. Appeal No. 18/2010: S.C minutes of 15.03.2012

Per Bandaranayake CJ:

A plain reading of the said Section 20, clearly indicates that when a Statutory Determination is published in the Gazette in terms of Section 19, from the date of such notification is published, the Land Reform Commission shall not have any right, title or interests in the said agricultural land. Accordingly, when an agricultural land owned by a person in excess of the ceiling on the date of commencement of the Land Reform Law had been vested in the Commission, and the said land be deemed to be held by such person under a statutory lease from the Commission, thereafter on the basis of a Statutory declaration made by the statutory lessee, if a Statutory Determination is made, the Land Reform

Commission would not have any right, title or interest from the date of the publication in the Gazette of the Statutory Determination. Therefore when the Statutory Determination is made and the Gazette Notification is published, the person in whose favour the said Determination was made would become the owner of the land stipulated in the said Statutory Determination.

This position was considered in *Jinawathie and Others v. Emalin Perera* ((1986) 2 Sri L.R. 121) by a Divisional Bench of this Court. In that, the objectives of the Land Reform Law and the effects of a Statutory Determination were clearly considered and it was held that,

Once the statutory determination is made the person in whose favour it was made becomes owner of the land specified in the determination with all the incidents of ownership”.

The questions of law is answered as follows:

16 (c) No. High Court has not erred in law. Statutory lessee has a right to make a statutory declaration within 1 month as provided by Section 18 of the said law. The law is clear on this aspect but title will pass only on publication of the gazette by the commission as required by Section 20 of the Land Reform Law.

16(f) No. Appellant would not be entitled to relief as prayed for in his amended plaint.

In all the above circumstances of the case in hand, I affirm the judgment of the Civil Appellate High Court. Appellant no doubt commenced his action by filing plaint on 18.12.1992 and the statutory determination was made by gazette notification only on 11.03.1994. Therefore the action filed by the

Appellant in the trial court was not maintainable as he had no title to the property in dispute as at the date of filing action. Appeal is dismissed with costs.

Appeal dismissed.

JUDGE OF THE SUPREME COURT

Sisira J. de Abrew J.

I agree

JUDGE OF THE SUPREME COURT

K.T. Chitrasiri J.

I agree

JUDGE OF THE SUPREME COURT