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

In the matter of an application for Leave to Appeal under and in terms of Article 128(2) of the Constitution of the Democratic Socialist Republic of Sri Lanka read with Section 9 of the High Court of Provinces (Special Provisions) Act No. 19 of 1990.

In the matter of an Application under and in terms of Section 10(1) of the Agrarian Development Act No. 46 of 2000 as amended.

SC (Appeal) No. : 117/2019
SC (SPL) LA : 74/2019
High Court : SP/HC/GA/ APL 1148/16
Agrarian Board of Review: AGBR/2016/7/1
Agrarian Tribunal : AT/07/07/10/2002/ 09/R/14

Gunawardane Liyanage Sirisena,
Dannangodawila, Thelikada,
Ginimellagaha.

Complainant

-Vs-

K. G. Piyadasa (deceased),
Medakeembiya, Podala.

Respondent

AND

In the matter of an Appeal under and in terms of Section 42 of the Agrarian Development Act No. 46 of 2000 (as amended).

Gunawardane Liyanage Sirisena,
Dannangodawila, Thelikada,
Ginimellagaha.

Complainant-Appellant

-Vs-

Naamulla Arachchige Premawathie,
Medakeembiya, Podala.

Substituted Respondent-Respondent

AND

In the matter of an Appeal under and in terms of Section 42B of Section 5c of the Agrarian Development Act No. 46 of 2000 (as amended) read with the High Court of Provinces (Special Provisions) Act No. 54 of 2006.

Naamulla Arachchige Premawathie,
Medakeembiya, Podala.

Substituted Respondent-Respondent-Appellant

-Vs-

Gunawardane Liyanage Sirisena,
Dannangodawila, Thelikada,
Ginimellagaha.

Complainant-Appellant-Respondent

AND NOW BY AND BETWEEN

Naamulla Arachchige Premawathie,
Medakeembiya, Podala.

Substituted Respondent-Respondent-Appellant-Appellant

-Vs-

Gunawardane Liyanage Sirisena,
Dannangodawila, Thelikada,
Ginimellagaha.

Complainant-Appellant-Respondent-Respondent

BEFORE : **E. A. G. R. AMARASEKARA, J.**
K. KUMUDINI WICKREMASINGHE, J.
JANAK DE SILVA, J.

COUNSEL : S. N. Ihalakathrige for the Substituted Respondent-Respondent-Appellant-Appellant

Nuwan Bopage with P. R. S. Pinnaduwa for the
Plaintiff-Appellant-Respondent-Respondent

ARGUED ON : 06.12.2021

DECIDED ON : 18.07.2023

K.KUMUDINI WICKREMASINGHE J.

This is an appeal from a judgment of the Provincial High Court holden in Galle dated 31.01.2019 affirming the decision of the Agrarian Board of Review dated 06.10.2016 pertaining to the recovery of rent due from an alleged tenant (*ande*) cultivator.

I will briefly set out the factual background of the case as follows:

The Complainant- Appellant- Respondent- Respondent (hereinafter referred to as the "Respondent") instituted action before the Agrarian Tribunal holden in Galle against one K. G. Piyadasa, the predecessor of the Substituted Respondent- Respondent- Appellant- Appellant (hereinafter referred to as the ""Appellant). The Respondent instituted two complaints in 2002 and 2003 under and by virtue of Section 10 (1) of the Agrarian Development Act, No. 46 of 2000 as amended by Act No. 46 of 2011, contending that he is the owner of the paddy land in question, of which the aforesaid K. G. Piyadasa, the husband of the Appellant, is the tenant cultivator who has failed to pay rent due to him. The said K. G. Piyadasa rejected the Respondent's contention of being the owner of the aforesaid land, and argued that the land was possessed and cultivated by his predecessors over a long period, and as such, that he is not a tenant cultivator of the land and therefore is not bound by law to pay rent to the Respondent.

This matter was initially called up to be heard before the Office of the Deputy Commissioner of Agrarian Development of Galle. Following the establishment of the Agrarian Tribunal both complaints of the Respondent which were of a similar nature were taken up for inquiry before the Tribunal as one matter.

Afterwards, an inquiry was held and the Agrarian Tribunal pronounced its decision dated 20.01.2016 dismissing the Respondent's complaint holding that the Respondent had failed to establish the fact that the said K. G. Piyadasa was a tenant cultivator of the land. Being aggrieved by the decision of the Tribunal, the Respondent preferred an appeal on 29.01.2016 to the Agrarian Board of Review. When the matter was in progress before the Board of Review, K. G. Piyadasa passed away, after which his wife, the Appellant, was substituted for him in the action.

The Board of Review pronounced its decision on 06.10.2016 allowing the Respondent's appeal and setting aside the Agrarian Tribunal decision. The aggrieved Appellant preferred an appeal against said decision to the High Court of the Southern Province holden in Galle praying to set aside the decision of the Board of Review. After both parties filed their written submissions, the Learned High Court Judge pronounced the judgment dated 31.01.2019 affirming the Board's decision and dismissing the Appellant's appeal without costs.
The Appellant now appeals to the Supreme Court seeking to set aside the judgment of the High Court.

This Court on 02/07/2019, has granted leave only on the following question of law referred to in the paragraph 28(1) (i) of the Petition, namely;

1) Whether the learned High Court judge in his judgment dated 31.01.2019 failed to consider that the Respondent failed in proving in the inquiry before the Agrarian Tribunal that the K.G Piyadasa was the Tennent Cultivator of the paddy land in dispute

This being a civil dispute there is a grave error and a misdirection in the decision of the Agrarian Tribunal, as the tribunal in its order at several places had considered that the dispute before it was one that had to be proved beyond reasonable doubt- vide pages 3 and 4 of the said decision. The learned High Court Judge has correctly identified this error and misdirection of the original order and has stated as follows;

"*Having perused the record, it is found that the Agrarian Tribunal misdirected itself by seeking the standards of proof of the matter as of a criminal case i.e. beyond reasonable doubt. Where in an inquiry before an Agrarian Tribunal, matter before it need not be established by proof beyond reasonable doubt. Even where in an inquiry before a Labour Tribunal when it was alleged the reason for termination of employment was that the workman was guilty of criminal act involving moral turpitude, the allegation need not be established by proof beyond reasonable doubt. (Associated Battery Manufacturers Ceylon Ltd. Vs United Engineering Workers Union && N L R 451)*
It gives a strong inference that the matters to be decided in an inquiry need not be proved beyond reasonable doubt. Agrarian Disputes are civil in nature and the complainant must establish the respondent's liability only according to the preponderance of evidence."

After finding the said misdirection relating to the standard of proof, the learned High Court judge has confirmed the finding of the Agrarian Board of Review as the learned Judge was of the view that the Appellant had never denied during the inquiry that he was an Ande Cultivator and Respondent's stand point on the Appellant had remained unchallenged.
To sustain the judgment of the learned High Court judge and to answer the aforementioned question of law, it is not sufficient to find a misdirection or error in relation to the standard of proof by the Agrarian Tribunal but it is necessary to see whether there were sufficient materials before the Agrarian Tribunal for the proof of the stance of the Respondent that the Appellant was the Tenant Cultivator of the paddy field in dispute. The Question of law

allowed by this court when granting leave does not contemplate the validity of the paper title of the Respondent to the paddy land in dispute.

However, it is the contention of the Respondent that the Respondent holds good title to the land in question, named as "*Walapalle Liyadda*", situated in Thelikada, Galle. The Respondent had produced Deed of Transfer bearing No. 258 dated 19.01.1980, attested by P. D. G. Wimalarathne Notary Public, in support of his position that he had purchased the aforesaid property. He has produced the original of this deed which was more than 30 years old at the time of producing in evidence along with a photocopy for the perusal of the Tribunal. As per the order of the Tribunal even the extract of the folios of the land registry have been produced as P9. As per the said deed and the land registry folios the name of the paddy land is mentioned as "Walapalle Liyadde" and the extent is described as fifteen vee kurinis. Agricultural land register marked as P2 also confirm the existence of a paddy land named "Wallapalle Liyadde" of which the Respondent is the registered land owner. Through the deed marked P1 the Respondent has bought $1/10^{th}$ and $9/10^{th}$ (whole land) from 2 people. No evidence was placed before the Agrarian tribunal by the Appellant at least to say that the land in the deed and P2 is not the land Piyadasa and the Appellant enjoyed. It must be noted that the entries in the agricultural land register can be treated as prima facie proof of the facts stated therein- vide section 53(6) of the Agrarian Development Act No 46 of 2000. When P1 and P2 were marked, they were not challenged to indicate that the Respondent should further summon other witnesses to prove the authenticity of those documents. Even though, in P2 extent is described as 3 roods 30 perches, the boundaries described there in P2 tally with the boundaries found in the deed. It is true that there is no reference in P2 as to the time the said entries were made but the register is maintained by the officers of the relevant department, the respondent cannot be penalized for their lapses. P2 contains prima facie proof as to the paddy land and its owner even though it does not contain materials for the prima facie proof of that the Appellant's predecessor was the tenant cultivator.

The Respondent further has stated in evidence that K. G. Piyadasa, was his tenant cultivator, who had duly given the Respondent his share of the cultivation until the year 2001. In the aftermath of the failure of K. G. Piyadasa to pay the share due to him since the *Maha* cultivation season (කන්නය) of 2001, the Respondent instituted action before the Agrarian Tribunal.

The Respondent has further tendered a document marked P4, extract of the diary of the agrarian officer, Sugathadasa Ralahamy, to indicate that the rent was received for the years 1985 and 1986 from the Tenant cultivator Martin who was the father of said K G Piyadasa. This document also was not objected when it was produced. The diary of the former Agrarian officer would have been kept in the official custody of the Grama Niladari who certified photocopies of those entries and issued it to the Respondent. It is true some questions have been asked during cross examination to create some doubt or suspicion over these documents. This was not a criminal case to decide against the Respondent who was the complainant before the Agrarian Tribunal on certain doubts created through cross examination. As explained above this is where the Agrarian Tribunal misdirected itself and erred in deciding. The Respondent, as mentioned before, has placed sufficient material to show by prima facie evidence that he is the owner of the paddy land in dispute and along with the aforesaid documents has given oral evidence to say that that aforesaid Piyadasa was his tenant cultivator. It is common ground that the Appellant enjoys Property. If the Respondent is prima facie the owner and if there is nothing placed in evidence before the Tribunal against that, the Appellant and his predecessors must be trespassers, if not they must be licensees or Tenant Cultivators etc. under the Respondent. Respondent by marking certain documents, though some doubts were created through cross examination, and by giving oral evidence has taken up the position that Piyadasa and his predecessors were tenant cultivators.

The Respondent has also submitted extensive accounts of complaints made to officials attached to the Department of Agrarian Development on the grounds of irregular cultivation and non-payment of rent by Piyadasa. This shows that this is not a new stance taken up by the Respondent. The Respondent alleges that the Appellant was informed at numerous instances to participate at inquiries into the matter, which the Appellant had repeatedly refrained from doing. In particular, the Respondent submits a letter dated 21.05.2011 (marked ඇ8) issued following an ex-parte inquiry conducted before an official of the Agrarian Service Centre of Keradewala, Galle, which identified K. G. Piyadasa as the Respondent's tenant cultivator and ordered him to pay the owner's share due to the latter. Even though, the Appellant, in her written submissions dated 09.08.2019 vigorously denies the contents and credibility of the aforesaid letter, written submission is not evidence.

At the inquiry before the tribunal, the appellant has not placed anything or given at least oral evidence to deny the stance of the Respondent. In my view mere doubts created through cross examination or denials through written submissions do not suffice. Against the evidence placed by the Respondent, the Appellant should have explained how they possess the paddy land. If the Appellant has a paper title or she is a licensee or a person who holds the property on the strength of some other relationship she should have naturally placed that evidence before the tribunal. If the Appellant has become the owner of the property by prescription, she should have placed such evidence before the tribunal. The silence shown without placing evidence against the documentary and oral evidence placed before the tribunal on behalf of the Respondent, indicates that the Appellant had nothing to place against the said evidence led before the tribunal. In my view the balance should tilt in favour of the Respondent.

Upon perusing the evidence submitted at the inquiry before the Tribunal, it appears that the Respondent had succeeded in validly proving his paper title to the land in question by preponderance of evidence.

Conclusion

For the foregoing reasons, it can conclusively be determined that the Complainant- Appellant- Respondent- Respondent had succeeded in proving, on a balance of probabilities, that, *firstly*, he is the lawful owner of the land in question, *secondly*, that the predecessor of the Appellant, K. G. Piyadasa, had cultivated the land as a tenant cultivator, and *thirdly*, that the aforesaid K. G. Piyadasa had defaulted in paying the rents due since the *maha* season of 2001.

Thereby, it is noted that both the Agricultural Board of Review, by order dated 06.10.2016, and the High Court of the Southern Province holden in Galle, by judgment dated 31.01.2019 had correctly determined that the Appellant owes an arrears of rent to the Respondent.

Under these circumstances and for reasons elucidated in my judgment, I see no reason to interfere with the finding of the learned High Court Judge. This appeal is accordingly dismissed. The Court orders no costs.

JUDGE OF THE SUPREME COURT

E. A. G. R. AMARASEKARA, J.

I agree.

JUDGE OF THE SUPREME COURT

JANAK DE SILVA, J.

I agree.

JUDGE OF THE SUPREME COURT