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

S.C. Appeal No. 166/2010
S.C. (HC) CA LA. No.281/2010
HCCA Anuradhapura
No.NCP/HCCA/ARP/350/07
D.C. Anuradhapura No.18177/L

Mapalagamage Leelawathie,
Olukarada,
Kekirawa.

Plaintiff-Respondent-Appellant

Vs.

P.P.R.A.S. Perera,
Illukbadayagama,
Kekirawa

Defendant-Appellant-Respondent

BEFORE : Dr. Shirani A. Bandaranayake, CJ.
K. Sripavan, J. &
S.I. Imam, J.

COUNSEL : M.U.M. Ali Sabry with Erusha Kalidasa for Plaintiff-Respondent-Appellant

C.E.de Silva for Defendant-Appellant-Respondent

ARGUED ON: 03.10.2011

WRITTEN SUBMISSIONS
TENDERED ON: Plaintiff-Respondent-Appellant : 16-11-2011
Defendant-Appellant-Respondent : 11-11-2011

DECIDED ON: 15.11.2012

Dr. Shirani A. Bandaranayake, CJ.

This is an appeal from the judgment of the Civil Appellate High Court of the North Central Province holden in Anuradhapura (hereinafter referred to as the Civil Appellate High Court) dated 28-07-2010. By that judgment the High Court had set aside the judgment of the District Court of Anuradhapura (hereinafter referred to as the District Court) dated 15-02-2006, which was in favour of the plaintiff-respondent-appellant (hereinafter referred to as the appellant) and allowed the appeal of the defendant-appellant-respondent (hereinafter referred to as the respondent).

Being aggrieved by the said judgment the appellant preferred an application before this Court seeking leave to appeal on which said leave was granted by this Court.

The facts of this appeal, as submitted by the learned Counsel for the appellant, *albeit* brief, are as follows:

The appellant had preferred an application before the District Court seeking, *inter alia*, a declaration that she is entitled to the possession of the property in dispute and to eject the respondent from the premises in suit. It was her position that her husband was a permit-holder of the land in dispute, which possession was handed over to him by the Mahaweli Authority (P1). After the death of the appellant's husband, she claimed that in terms of Section 48 of the

Land Development Ordinance, she became the permit holder and had been carrying on the cultivating of the said land. The respondent had claimed that he is in possession of the said land since 1985 and had denied the fact that the appellant's husband was the permit-holder. The District Court granted relief as prayed for in the appellant's plaint.

Being aggrieved by the said decision the respondent had preferred an appeal to the High Court, which was allowed by its judgment dated 28-07-2010.

When this appeal was taken for hearing learned Counsel for the appellant as well as the learned Counsel for the respondent agreed that the appeal could be considered on the following question.

> " Learned Judges have failed to consider the law, that a permit-holder means any person in occupation of a land alienated to him, although no permit had been issued to him."

Learned Counsel for the appellant as well as the learned Counsel for the respondent conceded that the only issue in this appeal that has to be considered would be the interpretation of the term 'permit-holder' in terms of the Land Development Ordinance. Learned Counsel for the appellant contended that, although the appellant's husband did not possess a permit in terms of the Land Development Ordinance, as he was in occupation of the land in dispute, that he would come within the second limb of the said Section. Learned Counsel for the appellant further submitted that on the basis of the said position, since the appellant's deceased husband was the permit-holder during his life time, after his demise, the appellant, being his widow, should be treated as the permit-holder to the disputed land. It was also said that the respondent had only been the caretaker of that land.

Learned Counsel for the respondent contended that there was no permit issued to the appellant's deceased husband in terms of Section 25 of the Land Development Ordinance. It was further contended that the said deceased husband of the appellant had not been in occupation of the land in question and therefore the appellant cannot now claim to be a permit-holder in terms of the Land Development Ordinance.

The appellant submitted that her deceased husband was given the possession of the land in question by the Mahaweli Authority by virtue of the document marked P1. P1 dated 25-04-1980, is as follows:

> " ඉඩම් කට්ටි භාර ගැනීම
>
> බෙදුම් අංක 104 ඉඩම් ලාභීන්ගේ නාමලේඛනයේ අංක - යටතේ කැකිරාව මැතිවරණ කොට්ඨාශයේ ඉඩම් ලාභියෙකු ලෙස තේරී ඇති ආර්.ජේ.කේ. ඩී. රණතුංග වන මම මහවැලි සංවර්ධන මණ්ඩලය මගින් වෙන් කර දෙන ලද පහත සඳහන් උපලේඛනයේ සඳහන් බිම් කට්ටි මායිම් බලාගෙන භාර ගන්නා ලද බව මෙයින් සහතික කරමි. ඉඩම් කට්ටි මායිම් ආරක්ෂා කර ගැනීමටද පොරොන්දු වෙමි.
>
> . . . . "

In addition to the aforementioned document, no other document had been issued, admittedly either to the appellant or to her deceased husband. It is therefore apparent that the appellant or her deceased husband had not been

issued with a permit from the Mahaweli Authority under the Land Development Ordinance.

The Land Development Ordinance, which came into being in 1935, was introduced in order to provide for the systematic development and alienation of the then Crown land in the country.

Section 2 of the Land Development Ordinance, as amended, defines the words permit-holder, which reads as follows:

> " Permit-holder means any person to whom a permit has been issued and include a person who is in occupation of any land alienated to him on a permit although no permit has actually been issued to him."

According to the said definition the permit-holders could be categorized into two groups. The first type would be the permit-holders who are possessed with the permits issued to them under the Land Development Ordinance. The other category would consist of persons who had not received a permit, but occupies the land alienated to him on a permit.

The contention of the learned Counsel for the appellant was that the appellant belongs to the second group in terms of Section 2 of the Land Development Ordinance, as amended.

Learned Counsel for the respondent contended that for the appellant to come within the second category of permit-holders, it would be necessary for the land in question to have been alienated to the appellant's deceased husband on the basis of a permit, and that the document marked as P1 cannot be relied on, as a permit in terms of the provisions of the Land Development Ordinance.

Section 19A of the Land Development Ordinance, as amended, clearly refers to the manner in which the State land could be alienated. Section 19A (2) states that alienation of State land any person shall commence with such person in the first instance "receiving a permit authorizing him to occupy the land." It is also important to note the provisions contained in Section 25 of the Land Development Ordinance which clearly states that every permit shall be substantially in a prescribed form. The said prescribed form of the permit is set out in the Regulations.

The document marked P1, has been issued by an officer who had been authorized to handover the land to the permit-holder. An examination of the said document clearly indicates that it is not a permit that had been issued in the prescribed form in terms of Section 25 of the Ordinance. The necessity to issue the permit on a prescribed form was referred to in **Kassim Hameedu Lebbe v M. Sultan Samoon** ((1968) 71 N.L.R. 452). It was said in that decision that the permit shall contain certain conditions and may contain other conditions which the Government Agent is authorized to include under provisions of the relevant Law. The document marked P1 appears to be a document that is temporary in nature, which had been issued until the permit is issued to the permit-holder. It does not contain any conditions or details regarding the grant of the permit. Therefore it is clear that the document marked P1 cannot be accepted as a permit in terms of the Land Development Ordinance. Learned Counsel for the appellant contended that the appellant could be regarded as a permit-holder in terms of Section 2 of the Land Development Ordinance, as amended. The contention of the learned Counsel for the appellant was that Section 2 as amended, includes a person who is in occupation of any land alienated to him although no permit has actually been issued to him.

Section 2 of the Land Development Ordinance, as amended, referred to earlier is quite clear and it has made provision to include a person who is in occupation of the land that had been alienated to him on a permit. Such a permit should be issued as described earlier and must contain the necessary conditions. That being the legal position, the question which arises at this point is as to whether the appellant could claim to be the successor if her deceased husband as a permit-holder.

It is to be noted that the land in question is a paddy field, which had been cultivated by the appellant's husband during the time he was among the living. Appellant in her evidence had stated that her husband had died in 1998. It is to be noted that from that time onwards, the respondent had been cultivating the paddy field. This position is clearly evident when one examines her evidence, which reads as follows:

> " මහත්තයා නැති වුනාට පස්සේ බලා හදා ගන්න කෙනෙක් නැති නිසා බෑණට බලාගන්න කීවා. බෑණ කිව්වා එයාට ඉඩම මේ විත්තිකරු දෙන්නේ නැහැ කියලා. 97/98 මාස් කන්නයේ සිටම දෙන්නේ නැහැ. මෙම කුඹුර බලා ගන්න කවුරුත් නැති නිසා සේවකයෙක් වගේ කියල එයාට ලබා දුන්නේ. එයා මට මුණ දීලා කතා කරන්නේ නැහැ. 97/98 මාස් කන්නයේ සිට මෙම තැනැත්තා බලෙන් ඉන්නේ. ඊට ඉස්සෙල්ලා මේ තැනැත්තා මහත්තයාට උදව් කරන්න ඇති . . . . ස්වාමිපුරුෂයා මිය ගියාට පස්සේ මෙම විත්තිකරු මෙම ඉඩම ගැන කතා කලේ නැහැ. ඉඩම දෙන්න කිවා දුන්නේ නැහැ."

It is to be noted that since the death of the appellant's husband, she had not been able to cultivate the paddy field. In the cross examination it was revealed that the appellant had been away from the area where the paddy field was situated during the insurrection from 1988 onwards and had returned to the area only in 1992. In cross examination the appellant had accepted the position that she had not received a permit from the Mahaweli Authority.

" ප්‍ර- මහත්තයා භුක්තිය බාර දුන්නේ තමාට ?

උ- ඔව්.

ප්‍ර- මේකට තමුන්ට බලපත්‍රයක් ලැබුණේ නැහැ ?

උ- බලපත්‍රයක් තිබුණා.

ප්‍ර- (පැ. 01 පෙන්වයි). බලපත්‍රය කියන්නේ පැ. 01 ලේඛනයද ?

උ- (බලපත්‍රය පැමිණිලිකරු ලබා ගනියි). මහත්තයට දීලා තිබුණ එක මේක.

ප්‍ර- තමාට බලපත්‍රයක් දීලා තිබුණා ?

උ- නැහැ.

ප්‍ර- තමාගේ ස්වාමිපුරුෂයා වෙනත් අයෙකුට භුක්ති විඳීමට දීම නිසා තමාගේ ස්වාමිපුරුෂයාට බලපත්‍රයක් නිකුත් කලේ නැහැ කියලා දන්නවාද ?

උ- නැහැ."

It is therefore quite clear that although the deceased husband of the appellant had been enjoying the paddy field given to him by the Mahaweli Authority, during his life time, since his death in 1988 the appellant had not been able to harvest the said paddy field. On a careful examination of the documents before

Court and the evidence led before the District Court, it is evident that there had not been a proper permit granted to the deceased husband of the appellant; there has not been any evidence of payment of annual instalments and there had been no successor nominated.

As stated earlier, in terms of Section 2 of the Land Development Ordinance, as amended, although no permit has been actually issued to a person, he could still be regarded as a permit-holder provided that he had been in occupation of that land. The deceased husband of the appellant apparently had been cultivating the paddy field until his demise in 1988. In terms of the said Section 2 of the Ordinance, he had to be regarded as a permit-holder of the said paddy field in question. In such circumstances, irrespective of the short comings referred to above, the appellant could have been recognized as a permit-holder after the death of her husband.

However, it would be necessary to consider the provisions contained in the Land Development Ordinance in this regard as Section 68 of Ordinance No.19 of 1935 dealt with a situation where a successor had not entered into possession of the land within a period of six months from the date of the death of the permit-holder.

Section 68 of the Land Development Ordinance No. 19 of 1935 was repealed by Act No. 16 of 1969 and a new section was substituted.

The original Section 68 as well as the replaced section refer to the failure of succession. The replaced Section 68 reads as follows:

" **68 (1)** The spouse of a deceased permit-holder, who at the time of his or her death was paying an annual sum by virtue of the provisions of Sub-Section (3) of Section 19 A, or the spouse

of an owner, fails to succeed to the land held by such permit-holder on the permit or to the holding such owner, as the case may be –

a) if such spouse refuses to succeed to that land or holding, or

b) if such spouse does not enter into possession of that land or holding within a period of six months reckoned from the date of the death of such permit-holder or owner."

As stated earlier, the original Section 68 (1) also referred to the failure of a nominated life-holder to succeed if he did not enter possession of the holding within a period of six (6) months from the date of the death of the owner of the holding.

The applicability of the provisions contained in the original Section 68 was considered in **Gunawardena v Rosalin** ((1960) 62 N.L.R. 213). In that a grantee of land under the Land Development Ordinance had nominated his sister, the plaintiff, as the life-holder. He had died in 1951 leaving his widow (the 1st defendant) and their son (a minor) who was nominated under the Land Development Ordinance as the successor to the land by letter dated 17-06-1948. 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. It is to be noted that the plaintiff had never enjoyed the produce of the land or entered into occupation. The Supreme Court considering the provisions of Section 68(1) had held that as the plaintiff did not enter into possession within the period of six (6) months prescribed in Section 68 (1) of the Land Development Ordinance, the successor had succeeded to the holding. In deciding the issue, Basnayake, C.J. had stated thus:

> " 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 stated earlier, the original Section 68 had been replaced with a new section by Land Development (Amendment) Act, No. 16 of 1969. In the new Section 68 instances where failure to succeed to the holding are clearly stated. Accordingly, if a spouse of a permit-holder does not enter into possession of the land or holding in question within a period of six months reckoned from the date of the death of the permit-holder the said spouse would fail to succeed to the land so held by the permit-holder on the permit.

It is quite clear that since the death of the appellant's husband in 1988 she had not entered into possession of the paddy field. It had been harvested by the respondent from 1988 until 1992, the appellant in fact had not even being living in the area. The evidence before the District Court clearly reveals that the appellant had not entered into possession at all after 1988 and she had instituted action before the District Court in February 2001.

In such circumstances, considering the provisions contained in Section 68 (1) of the Land Development (Amendment) Act, since the appellant had failed to enter into possession of the land in question within a period of six months from the date of the death of the appellant's husband, the appellant is not entitled to claim succession to the land so held by her deceased husband as a permit-holder.

For the reasons stated above, the question on which leave to appeal was granted is answered in the negative.

This appeal is accordingly dismissed and the judgment of the Civil Appellate High Court dated 28-07-2010 is affirmed.

There will be no costs.

Chief Justice

K. Sripavan, J.

I agree.

Judge of the Supreme Court

S.I. Imam, J.

I agree.

Judge of the Supreme Court