

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

In the matter of an Application for leave to
appeal.

SC.Appeal No. 142/2012

SC/HCCA/LA/295/2011

SP/HCCA/Ma/290/04(F)
DC/Hambanthota No. 3136/L

1. Vitiyala Kankanamge Heenhamy alias
Hamine.
2. Chandrasiri Senanayake, Both of 18 Ela,
No.507, Padalangala.

**DEFENDANTS-RESPONDENTS-
PETITIONERS**

-Vs-

Seena Patabendige Roshini of “Ediriwarna
Niwasa”, Baragama, Ambalanthota.

PLAINTIFF- APPELLANT-RESPONDENT

Before: : Sisira J de Abrew, J
Upaly Abeyrathne, J &
Prasanna Jayawardena, PC, J

Counsel: : Rohan Sahabandu PC for the Defendant-Respondent- Appellants.
Vidura Gunarathne for the Plaintiff-Appellant-Respondent.

Argued &

Decided on: : 20.07.2016

Sisira J. de Abrew, J

Heard both counsel in support of their respective cases. The most important question that must be decided in this case is whether the 1st and 2nd Defendants-Respondents-Petitioners (hereinafter referred to as the 1st and 2nd Defendants) who are the heirs of Saradiyas Senanayaka are entitled to cultivate the land in question as the Ande Cultivators. In short whether the 1st and 2nd Defendants become the successors of the original Ande Cultivator with regard to the land in question. Under Act No. 58 of 1979 there were provisions to succeed to the Ande Cultivatorship. This Act was repealed by Act No. 46 of 2000 which came into operation on 18.08.2000. The action was filed on 18.12.2001. Saradiyas died on 15th of April 2001. Provisions relating to succession that contained in Act No. 15 of 1979 are not found in Act No. 46 of 2000. Therefore it appears when the action was filed, the law that was in operation was Act No. 46 of 2000. Under Act No 46 of 2000, there is no provision for succession to the Ande Cultivatorship. We therefore hold that the 1st and 2nd Defendants are not entitled to succeed to the Ande Cultivatorship. We further hold that they are no longer the Ande Cultivators of Saradiyas Senanayake with regard to the land in question.

Considering all these matters, we hold that the Plaintiff in this case is entitled to use the possession of the land in question as per the letters of administration issued in case No. T 01/93 in the District Court of Hambanthota. We further hold that the Plaintiff is entitled to eject the 1st and 2nd Defendants and their agents and representatives from the land in question.

Considering all these matters, we come to the conclusion that the 1st and the 2nd Defendants should hand over the vacant possession of the land in question. The 1st and 2nd Defendants now agree to handover the vacant possession of the land in question to the Plaintiff-Appellant-Respondent (hereinafter referred to as the Plaintiff) before 31st of August 2016. If the 1st and the 2nd Defendants fail to hand over the vacant possession of the land in question to the

Plaintiff, the Plaintiff is entitled to take a writ from the District Court without notice. The District Judge is hereby directed to issue a writ, if the 1st and 2nd Defendants fail to hand over the vacant possession of the land to the Plaintiff on or before 31.08.2016 . After considering the submissions made by both parties, we hold that the Plaintiff is not entitled to the relief claimed in paragraph iii of the prayer to the plaint. However the Plaintiff is entitled to recover a sum of Rs. 200,000/- from the 1st and the 2nd Defendants. Mr. Sahabandu, President's Counsel appearing for 1st and the 2nd Defendants submits that the 1st and the 2nd Defendants would pay Rs. 200,000/- to the Plaintiff before 30.09.2016. If the 1st and the 2nd Defendants fail to pay the said amount to the Plaintiff on or before 30.09.2016, the Plaintiff is entitled to take the writ out in respect of the said amount with costs that would be incurred in taking the writ.

JUDGE OF THE SUPREME COURT

Upaly Abeyrathne, J

I agree.

JUDGE OF THE SUPREME COURT

Prasanna Jayawardena, PC, J

I agree.

JUDGE OF THE SUPREME COURT

kpm/-