

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

In the matter of an Application for Leave to  
Appeal under and in terms of Section 754 (2) of  
the Civil Procedure Code read with Section 757  
thereof.

**CA No: CALA 53/07**

**D.C. Horana Case No: 2947/Land**

1. SeinudeenMarikkarAhamed Bari,

Bogahawatta, Atalugama,

Bandaragama.

2. Abdul KafoorMohommed Ameer

5/1, Arathusha Lane,

Colombo 06.

**Plaintiffs**

**Vs.**

UpulKarunaratne,

No : 26,

Dhammaratana Road,

Horana.

**AND**

1. SeinudeenMarikkarAhamed Bari,

Bogahawatta, Atalugama,

Bandaragama.

2. Abdul KafoorMohommed Ameer

5/1, Arathusha Lane,

Colombo 06.

**Plaintiffs – Petitioner**

**Vs.**

UpulKarunaratne,

No : 26,

Dhammaratana Road,

Horana.

**Defendant – Respondent**

**BEFORE** : **P.W.D.C. JAYATHILAKE, J**

**COUNSEL** : HarshaSoza P.C with A.  
Dharmaratne for the Petitioner.  
PrabuddhaHettiarachchi for the  
Respondent.

**ARGUEDON** : 01.07.2014

**DECIDEDON** : 27.11.2014

**P.W.D.C. Jayathilake, J**

Action for declaration of title bearing No: 2947/L has been instituted by Plaintiff Appellants, namely, Seinudeen Marikkar Ahamed Bari and Abdul Kapoor Mohamed Ameer against the Defendant Respondent, namely, UpulKarunaratne seeking *inter alia* a declaration that the 1<sup>st</sup> and the 2<sup>nd</sup> Plaintiffs are jointly entitled to an undivided 89/120 share in the land described in the schedule to the plaint. They have further asked for a declaration that the defendant has no right whatsoever to the said land.

An interim injunction and an enjoining order against the Defendant also has been prayed for to restrain the Defendant from causing damage and loss whatsoever to the 1<sup>st</sup> Plaintiff's cultivation in the land and from preventing the Defendant from cultivating the land. This is an appeal in respect of the order made by the District Judge dismissing the application for interim injunction.

Admittedly Defendant's father was the tenant cultivator of the land in dispute and upon his death, it was devolved on the Defendant's mother. The point in dispute is the claim of the Defendant for the said right on the basis that he has been nominated as the successor to tenant cultivation in terms of the document marked Y14. The counsel for the appellant submits that Y14 is wrong and illegal as there was no provision under the law for the appointment of the successor to tenant cultivation as at 23.08.1991 on which date the said nomination was made. He further submits that according to the paddy land registers marked as X30 and X31, the Defendant is not a registered tenant cultivator of the land in dispute. Therefore, the learned District Judge has erred in coming to the conclusion that the Defendant was in possession of the land according to which the decision to dismiss the application for interim injunction has been made the learned President Counsel for the Appellants states.

The counsel for the Defendant Respondent accepts the legal position submitted by the Counsel for the appellants under the provisions of the Agrarian Services Development Act as it stood at the time of filing the case with regard to the

succession of tenant cultivator. But his argument is that it could not be interpreted to mean that the Appellants get the right to forcibly evict the Respondent without recourse to the final judgment of the case. In support of his argument, he stresses that Plaintiff Appellants in their plaint have asked for an order for the eviction of the Defendant Respondent from the corpus as a main relief of the case.

On the face of the plaint it appears that even though the plaintiffs have asked for eviction of the defendant, the case has been filled on the basis that the Plaintiffs are in fact in the possession. But when going through the averments up to the prayer, the impression one gets is that although the plaintiffs have made an attempt to obtain the possession it has been disturbed by the defendant.

While admitting that he is cultivating the paddy land cultivated by his father and the mother as tenant cultivator and claiming the same right on the basis that he has been nominated as the successor to the said tenancy, the defendant has stated that he has become a co-owner of the property by purchasing an undivided share.

It appears that there is only one issue to be adjudicated in the main case, that is the title of the land. This court is of the view that the title has become a question of law on the above mentioned admissions of the defendant. Yet, as the possession is a question of fact which is relevant in respect of issuing an interim injunction as prayed for in the plaint, the court must be satisfied with the fact about the person who was in possession of the property. As the learned District Judge has come to the

conclusion that the defendant respondent was in possession on the reasons set out in his order, this court is of the opinion that there is no reason to interfere with the order of the learned District Judge. Therefore, this court decides to dismiss the appeal.

*Appeal dismissed.*

**JUDGE OF THE COURT OF APPEAL**