

In the Court of Appeal of the Democratic Socialist Republic of Sri Lanka

C.A (PHC) 180/06

P.H.C. Rathnapura HCRIRA/80/02

M.C.Embilipitiya No.60022

Cibil Henriyata Muththettupola
Balawinna Walawwa,
Pallebedda.

1st named 1st Party-Respondent-Appellant

Vs.

Budsingha Mudiyanseelage Heen Manike,
Horepola,
Godakawela.

Bimna Mohottalage Dingiri Mudiyanse,
Asiri Mawatha,
Maddegama,
Godakawela.

**2nd and 3rd named 1st Party Respondents
- Respondents**

01. Sinhapura Lekamlage Chandrasena

02. Sinhapura Lekamlage Sisira Kumara

03. Sinhapura Lekamlage Chandra Ranjani Manike,
All of Maddegama,
Godakawela.

2nd Party - Petitioner - Respondents

Officer in Charge,
Police Station,
Godakawela.

Complainant-Respondent-Respondent

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P.H.C. Rathnapura HCR/RA/80/02

M.C.Embilipitiya No.60022

Before : K.T.Chitrasiri,J. &
Malinie Gunaratne,J.

Counsel : 3rd named 1st party – respondent- appellant
is absent and unrepresented
Vishwa de Livera Tennakoon for the 2nd party
Petitioner-Respondent.
Shantha Karunadhara for the 2nd named 1st party Respondent

Argued and

Decided on : 13/11/2014.

K.T.Chitrasiri,J.

The Registrar of this Court has sent several notices under registered cover to the appellant directing him to be present in this Court. The last notice that had been sent by the Registrar to the appellant is dated

08/08/2014 by which he was directed to be present in this Court today. The said notice has been sent to the address given in the petition of appeal under registered cover. Despite all those notices been sent to the appellant, she has failed to come to this Court. The Registrar also has sent a notice to the Registered Attorney of the Appellant and the said notice had been returned with the endorsement that the premises given in the address is closed. Therefore, this appeal is taken up for argument in the absence of the appellant.

At this Stage, learned Counsel for the 2nd party petitioner-respondents submits that in the written submissions filed in the High Court by the petitioners who are the 2nd party respondents, they have taken up the position that the learned Magistrate has no jurisdiction to entertain this case since the subject matter before Court is to claim “Ande” rights of a paddy filed. The authority namely *Mansoor And Another Vs. O.I.C. Awisawella Police And Another (1991) 2SLR 75* upon which the said position had been taken up is also been referred to in the written submission filed on behalf of the respondent (Vide at page F23 in the appeal brief).

The learned Counsel for the 1st party respondents also submits that this is a dispute with regard to the possession of a paddy field. Therefore, it is clear that the issue in this appeal is coming under the purview of the Agrarian Development Act No.46 of 2000. The High Court Judge has not addressed his mind to this question of law even though it had been specifically taken up in the submissions filed on behalf of the 2nd party petitioner-respondents.

In the case of *Mansoor And Another Vs. O.I.C. Awisawella Police And Another* (Supra) S.N.Silva, J. (as then was) has held thus:

“Where a statute creates a right and in plain language, gives a specific remedy or appoints a specific tribunal for its enforcement, a party seeking to enforce the right must resort to that tribunal and not to other.”

Admittedly, the dispute in this case comes under the purview of the Agrarian Development Act No.46 of 2000. Therefore the learned Magistrate should have referred the parties to the proper forum immediately after filing

the information in Court. He has failed to do so. Accordingly, the orders made by the learned Judges in the Court below are made null and void *ab initio* .

For the aforesaid reasons this appeal is dismissed.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

W.M.M.Malinie Guneratne,J.

I agree.

JUDGE OF THE COURT OF APPEAL

WC/-