

1074 Present : Udalagama, J., and Sharvananda, J.

S. V. OMAR KATHA, Appellant, and B. SEDERA,
Respondent

S. C. 820/73—M. C. Matale, 38484

*Paddy Lands Act No. 1 of 1958—Transfer of paddy field by landlord—
Whether he ceases to be landlord then—Section 4 (1A) (d) (ii)—
Liability of landlord to pay damages thereunder—Evidence that
should be led by evicted tenant as condition precedent.*

The fact that a landlord transferred his paddy field to another person and ceased to be owner of it does not preclude him from continuing to be the landlord within the meaning of the provisions of the Paddy Lands Act. But he is not liable to be punished under section 4 (1A) (d) (ii) of the Act unless the evicted tenant leads evidence establishing that the landlord *continued to occupy* the field after he was ordered to restore possession of the field to the tenant.

APPEAL from an order of the Magistrate's Court, Matale.

D. R. P. Goonetilleke, with Luke Ratnayake, for the respondent-appellant.

Applicant-respondent absent and unrepresented.

Cur. adv. vult.

March 28, 1974. SHARVANANDA, J.—

The applicant-respondant complained to Court that the respondent-appellant who was alleged to be the landlord of the field called Durakame Kumbura situated in the Matale District, although he was duly served with a notice in writing dated 23rd May 1970 signed by the Assistant Commissioner of Agrarian Services, Matale, under the provisions of Section 4 (1) (a) (d) (ii) of the Paddy Lands Act directing the appellant to hand over the said field on or before the 23rd day of July 1970, failed to hand over the possession of the said field to the applicant and that the respondent-appellant had rendered himself liable to pay the applicant a sum of Rs. 1,710 in terms of the provisions of Section 4 (1) (a) (d) (ii) of the Paddy Lands Act, No. 1 of 1958. The learned Magistrate has on the evidence come to the following conclusion :—

“The applicant had worked the field as an de cultivator under the respondent for over 20 years. He was evicted from the field on 15.3.67. He made an application to be restored to possession on 20.7.67. The complaint was inquired into and an order for restoration was made on 23.1.68 and parties were informed of the order. The respondent appealed against the order unsuccessfully. The respondent was ordered to hand over the field to the applicant on 22.7.70. This notice was served on the respondent but the respondent failed to comply with the order. Possession of the field was handed over to the applicant on 7.2.71 by the Fiscal by order of this Court in Case No. 35926.”

The appellant in the course of his evidence took up the legal objection that he had ceased to be the landlord from 1967 as he had transferred the field to his daughter by deed No. 34083 dated 11th March, 1967. In our view the fact that the appellant had ceased to be the owner of the field from 1967 does not preclude him from continuing to be the landlord within the meaning of the provisions of the Paddy Lands Act. In the course of his evidence the appellant also stated that after the aforesaid transfer he had ceased to be in possession of the field. As against this evidence the applicant has not led any evidence to show that the appellant was in *occupation of the said field at the relevant time* after the receipt of the Commissioner's order that the applicant be restored to possession as from 22.7.70.

The applicant has come into Court on a statutory cause of action and it is for him to establish to the satisfaction of Court the relevant ingredients of the said cause of action. In this case the applicant has failed to lead any evidence whatsoever to show that the appellant *continued to occupy* the field after 22.7.70,

the relevant date in terms of Section 4(1) (a) (d) (ii). All parties in the lower court appear to have overlooked this aspect of the matter, and the learned Magistrate has not recorded any finding on this aspect of the case. The word "occupation" in Section 4 (1) (a) (d) (ii) in our view means physical or constructive occupation resulting in some material benefit to the person so occupying. In the circumstances we are of the view that the applicant has failed to establish the relevant ingredients in terms of Section 4 (1) (a) (d) (ii) of the Paddy Lands Act. Hence his claim fails. We accordingly set aside the order of the learned Magistrate directing the appellant to pay the sum of Rs. 1,710 as compensation to the applicant in terms of Section 4 (1) (a) (d) (ii) and dismiss the application of the applicant-respondent. We make no order as to costs both in the lower court and in appeal.

UDALAGAMA, J.—I agree.

Order set aside.

