1969 *Present :* **G.P.A. Silva, A.C.J., and Siva Supramaniam, J.**

DISSANAYAKE MUDIYANSELAGE PUNCHI MAHATMAYO, Petitioner, *and* D. WIJEDORU (Assistant Commissioner of Agrarian Services) and another, Respondents

S.C. 257/68—Application for a Mandate in the nature of a Writ of Certiorari

Paddy Lands Act, as amended by Act No. 11 of 1964—Sections 3 (1), 3 (1A), 4 (6)—Joint tenant-cultivators—Protection given to them against eviction—Date of commencement—Interpretation Ordinance (Cap. 2), s. 2 (ii).

Not only sole tenant-cultivators but also joint tenant-cultivators were protected by the Paddy Lands Act even before section 3 (1A) of that Act was introduced on 24th August 1964 by the amending Act No. 11 of 1964.

APPLICATION for a writ of *certiorari*.

Mark Fernando, for petitioner.

N. Sinnetamby, Crown Counsel for 1st respondent.

M. Kanagasunderam, for 2nd respondent.

Cur. adv. vult.

January 29, 1969. G. P. A. SILVA, A.C.J.—

This is an application by the petitioner, who is the owner of a paddy field, for a Writ of Certiorari to quash the proceedings held and the orders made by the 1st respondent, an Assistant Commissioner of Agrarian Services, on the application made by the 2nd respondent to be restored to possession of this paddy field on the ground that he had been wrongly evicted by the petitioner. On the 2nd September, 1963 the 2nd respondent, alleging that he was and had been a tenant cultivator of the said paddy field under the petitioner, made an application to the 1st respondent under the provisions of the Paddy Lands Act to have himself restored to the possession of the said paddy field on the ground that he had been wrongly evicted. The 1st respondent held certain inquiries on this application commencing on 29th July, 1964 and ending on 29th November, 1965 and, at the conclusion thereof, made order declaring that the 2nd respondent was a joint tenant cultivator with the husband of the petitioner and restoring him to possession of the said paddy field. The petitioner thereupon appealed to the Board of Review constituted under the Paddy Lands Act against the order of the 1st respondent but his appeal was dismissed by the said Board.

The main contention for the petitioner is that, at the time of the application made by the 2nd respondent for relief under the provisions of the Paddy Lands Act, no provision existed in this Act to recognise the rights of a joint tenant cultivator and that such a right was recognised only by the amendment to this Act made on the 24th August, 1964 and that the 1st respondent had therefore no jurisdiction to entertain the said application or to make an order in terms of a subsequent amendment to the Act which was not retrospective in its operation. The argument is therefore twofold, namely, that whatever rights the 2nd respondent is entitled to, have to be resolved in terms of the provisions of the original Act and that the 1st respondent was acting without jurisdiction when he exercised powers conferred on him by the Amending Act which came into operation only on 24th August, 1964.

In regard to the first limb of his argument the submission of counsel for the petitioner is that section 3 of the original Act No. 1 of 1958 did not recognise joint cultivators but only a single cultivator and that a person in the position of the 2nd respondent would not come within the definition of a tenant cultivator under that section. The Amending Act No. 11 of 1964 was in his submission intended to fill this gap and bring in joint cultivators within its scope. Section 3 (1) provides :—

> Where any person is the cultivator of any extent of paddy land let to him under any oral or written agreement made before or after the coming into operation of this Act in the Administrative District in which that extent wholly or mainly lies, then, if he is a citizen of Ceylon, he shall, subject to the provisions of this Act, be the tenant cultivator of that extent.

In view of the provisions of section 2 (*ii*) of the Interpretation Ordinance that words in the singular number shall include the plural, it is difficult to accept the submission that section 3 of the Paddy Lands Act contemplated only a single cultivator. Secondly, inherent in the nature of paddy cultivation and more pronounced than in other types of cultivation is the necessity for joint participation in the various operations of ploughing, sowing and reaping. It is idle to think that the framers of the original Act did not contemplate the numerous instances where more than one person, whether they were members of a family or otherwise, cultivated paddy fields jointly as tenants of absentee landlords. If the contention of the counsel for the petitioner is sound it will also necessarily lead to the conclusion that the original Act or even the Amending Act did not contemplate more than one landlord, of any paddy field let to a tenant cultivator; for, the word landlord is generally used in the singular in both the Acts except in the preamble to the original Act. Such an interpretation will lead to the absurd result that jointly owned paddy fields let out to tenant cultivators in Ceylon, which are more the rule than the exception, would fall outside the purview of the Paddy Lands Act. For all these reasons I do not find it possible to agree with the contention of the petitioner in regard to this point.

Although it is not necessary to deal with this matter in order to decide on the initial contention of the petitioner, in view of the submission made by counsel, the question arises as to what the purpose was in introducing the new sub-section 1A immediately after section 3 (1) of the original Act. To my mind it may well have been intended to define clearly the position of cultivators in rotation. For, where there is an agreement between one or more landlords and one or more cultivators as contemplated by section 3 (1) of the original Act, but the cultivation as between the tenants is carried on in rotation, one cultivator or a set of cultivators who work the paddy field in one season would not be cultivators during the next season. Had it not been for the new section 3 (1)A introduced by the Amendment the cultivator or cultivators, as the case may be, who did not do any cultivation during one of the seasons in rotation would commit a breach of the agreement with the landlord and forfeit his or their rights as tenant cultivator under the agreement. The new subsection seems to have intended therefore to afford protection to such a tenant cultivator of that extent (let to him under any oral or written agreement) for the season or seasons in which he is a cultivator of that extent. I am fortified in this view by the absence in the original Act, in the definition of "tenant cultivator" of the words "season or seasons" which find a prominent place in the same definition in the Amending Act. The question of seasons would in the context in which it is used, only arise in the case of cultivation in rotation and would not have a place in the normal case where the tenant cultivator or cultivators would be cultivating the extent let to him or them during every season. The word 'jointly' in this section does not militate against this construction because the agreement with the landlord in such a case may be entered into jointly by several tenants undertaking to cultivate the land jointly,

but at the same time one of the tenants (where there are only two joint tenants) or one group of tenants (where there are several) cultivating the land in such alternate seasons as may be agreed upon.

In the application before me no question of any cultivation in rotation arises. According to the affidavit filed by the 2nd reaspondent he has been tenant cultivator of the paddy field in question under the petitioner since 1947. The finding of the 1st respondent after inquiring into the complaints of eviction, which finding is hardly being canvassed, is that the 2nd respondent was at least a joint tenant cultivator with Cuda Banda, the husband of the petitioner, at the time of the eviction complained of. In view of the conclusion reached by me earlier therefore the 1st respondent acted with jurisdiction when he held the inquiry and gave his decision which was upheld by the Board of Review and in respect of which the present application for a Writ is being made.

Crown Counsel who appears for the 1st respondent, while submitting that the original Act did contemplate joint cultivators, also contends that even if joint cultivators were brought within the purview of the principal Act by the introduction of sub-section 1A, on 24th August, 1964, the moment the Amending Act came into operation tenants, whether single or joint, were protected as from 12th April, 1956 from which date evictions of tenant cultivators were to be taken notice of in terms of section 4 (6) of the original Act even though the Act became law only on 1st February, 1958. I think there is substance in this contention. The original Act itself was retrospective in its nature in that relief was given by it to persons whose grievances arose nearly two years before the passing of the Act. Even if the Amending Act created a new class of tenants who were entitled to the reliefs set out in the original Act, in the absence of any provision to the contrary as to the operative date from which such reliefs could be given, it is reasonable to assume that the date already specified in the original Act which now embodies the Amending Act is the operative date.

In supporting the contention of counsel for the 1st respondent counsel for the 2nd respondent submits that there is no indication either direct or indirect anywhere in the original Act that only sole tenant cultivators were to be protected by the Act. He further submits that if the question of the eviction of joint tenants had arisen prior to the passing of the Amendment of 1964, no court could have reasonably held that the original Act did not protect joint tenant cultivators. This is a submission with which I agree. In the circumstances both the contentions of counsel for the petitioner fail. The application is accordingly dismissed with costs.

SIVA SUPRAMANIAM, J.—I agree.

Application dismissed.