

PETITIONER:
L.VASANT KUMARI

Vs.

RESPONDENT:
BALAMMAL

DATE OF JUDGMENT 30/11/1994

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
VENKATACHALA N. (J)

CITATION:
1995 SCC (1) 635 JT 1995 (2) 83
1994 SCALE (5) 323

ACT:

HEADNOTE:

JUDGMENT:
ORDER

1.This appeal raises question of law of general importance. Though the respondents were successful all through, they are now losing the battle in this Court. The property initially belonged to one Subramonian Pillai. By the sale deed dated 5-10-1955, Subramonian Pillai sold the property in question to one Vaikuntam Pillai. By agreement dated 15-10-1956, the respondent agreed to purchase the property from Vaikuntam Pillai. Based on that agreement, he filed a suit for specific performance which was decreed and ultimately confirmed by the High Court on 18-11-1963. Thereafter, the respondents filed OS No. 76 of 1967 on the file of Munsif's Court, Trivandrum for possession on the ground that the appellant trespassed into the land and the hut on 4-11-1955, and that, therefore, she is liable to be ejected. The suit was decreed by the trial court. On appeal, it was reversed and in Second Appeal No. 686 of 1978, by judgment dated 28-11-1983, the High Court reversed the decree of the appellate court and confirmed that of the trial court. Thus this appeal.

2.The question is whether the appellant is deemed a Kudikidappukaran within the meaning of Explanation 11-A of Section 2(25) of Act 1 of 1964 as amended by Act 35 of 1969. Section 2(25) defines Kudikidappukaran as :

"(25) 'Kudikidappukaran' means a person who has neither a homestead nor any land exceeding in extent three cents in any city or major municipality or five cents in any other municipality or ten cents in any panchayat area or township, in possession either as owner or as tenant, on which he could erect a homestead and -

(a) who has been permitted with or without an obligation to pay rent by a person in lawful possession of any land to have the use

and occupation of a portion of such land for the purpose of erecting a homestead; or
(b) who has been permitted by a person in lawful possession of any land to occupy, with or without an obligation to pay rent, a hut belonging to such person and situate in the said land; and 'Kudikidappu' means the land and the homestead or the hut so permitted to be erected or occupied together with the easements attached thereto."

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Explanation II-A was introduced by Amendment Act of 1972 with retrospective effect. Explanation 11-A reads thus:

"Explanation II-A.- Notwithstanding any judgment, decree or order of any court, a person, who on the 16th day of August, 1968, was in occupation of any land and the dwelling house thereon (whether constructed by him or by any of his predecessors-in-interest or belonging to any other person) and continued to be in such occupation till the 1st day of January, 1970, shall be deemed to be a Kudikidappukaran."

The proviso was also added thereto-

"(a) in case where the dwelling house has not been constructed by such person or by any of his predecessors-in-interest, if -

(i) such dwelling house was constructed at a cost, at the time of construction, exceeding seven hundred and fifty rupees; or

(ii) such dwelling house could have, at the time of construction, yielded a monthly rent exceeding five rupees; or

(b) if he has a building or is in possession of any land exceeding in extent three cents in any city or major municipality or five cents in any other municipality or ten cents in any panchayat area or township, either as owner or as tenant, on which he could erect a building."

3. Though Section 2(25) defines Kudikidappukaran, the definition by operation of the Amendment Act and introduction of Explanation 11-A has no materiality for the purpose of this case. The Explanation 11-A is only material. It contemplates in the main part of the definition of Kudikidappukaran and notwithstanding any judgment, decree or order of any court, a person, who on 16-8-1968, was in occupation of any land and the dwelling house thereon whether constructed by him or by any of his predecessors-in-interest or belonging to any other person and continued to be in such occupation till 1-1-1970, shall be deemed to be Kudikidappukaran. It would appear that there was a chain of decisions of the Kerala High Court interpreting in one way or the other of the definition of Kudikidappukaran and to remove the doubts, thus cropped up the need for legislature to step in and introduce Explanation II-A, with retrospective effect. As to operation of this Explanation, what is relevant to be considered is that the person claiming to be deemed Kudikidappukaran, he/she shall be in occupation of the land and the dwelling house as on 16-8-1968, whether constructed by himself or by herself or by any of his predecessors-in-interest or it may belong to any other person. Another condition to be fulfilled is that the person continues to remain in possession till 1-1-1970. Under General Clauses

Act, male includes female. On satisfying these requirements the person in possession shall be deemed to be Kudikidappukaran. In the plaint it was admitted that the appellant trespassed in the building on 4-11-1955 and took up residence therein. In view of that admission since she came into the occupation of the building as on 5-11-1955 much before the specified date and remained to be in possession even till date, the necessary conclusion would be that she became the deemed Kudikidappukaran.

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4. This Court, in *S. Appukuttan v. Thundiyil Janaki Amma* 1 interpreting Explanation 11-A introduced by 1972 Amendment Act held that the restricted interpretation cannot be given to the definition under Explanation II-A. The Explanation equates an occupant of a homestead or a hut thereon during the relevant period with a Kudikidappukaran as defined in the main clause. Accordingly, anyone satisfying the requirements of Explanation 11-A and its proviso would be statutorily deemed as one permitted to occupy a homestead or a hut thereon as envisaged in sub-clauses (a) and (b) of Section 2(25) and would automatically be entitled to have the status of Kudikidappukaran and to all the benefits flowing therefrom.

5. In that view of the matter and in view of the admission of the respondents in the plaint and the interpretation given hereinbefore, it must be held that the appellant is a deemed Kudikidappukaran within the meaning of Explanation II-A to Section 2(25) of the Kerala Land Reforms Act. As such the appellant is not liable to be ejected by the decree. Thereby the suit is not sustainable and the decree granted by the trial court and affirmed by the High Court is clearly illegal. The appeal is accordingly allowed and the suits stand dismissed. Parties to bear their own costs throughout.

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