

CASE NO.:
Appeal (civil) 8259 of 2001

PETITIONER:
KUNJAN VASU

Vs.

RESPONDENT:
MADHAVAN ACHARI AND ORS.

DATE OF JUDGMENT: 12/12/2001

BENCH:
K.T. Thomas & S.N. Phukan

JUDGMENT:

THOMAS, J.

Leave granted.

Appellant is a Kudikidappukaran in the land of the first respondent. He applied for purchasing ten cents of land adjoining to his Kudikidappu. The word Kudikidappukaran is defined in Section 2(25) of the Kerala Land Reforms Act, 1963 (for short the Act). Shorn of details of the definition which are unnecessary for the purpose of this case, it means a person who has been permitted by a person in lawful possession of any land to occupy, with or without any obligation to pay rent, a hut belonging to such person and situate in the said land. (The person who is so permitted should have had neither a homestead nor any land exceeding ten cents in any Panchayat area on which he could erect a homestead). The word Kudikidappu means the land and the hut so permitted to be occupied together with the easements attached thereto.

The controversy which has bogged down in this appeal is whether the appellant is entitled to purchase ten cents of land as he claimed. The Land Tribunal as well as the Appellate Authority found that he is entitled to purchase ten cents of land. But a Division Bench of the High Court held that appellant is entitled to purchase only two cents of land out of 60 cents belonging to the first respondent. The impugned judgment of the Division Bench has thus upheld the contention of the respondents on that score.

Section 80A of the Act confers right on a Kudikidappukaran to purchase the Kudikidappu occupied by him and the land adjoining thereto. Sub-section (3) thereof imposes a limit regarding the extent of land which he can purchase. For the purpose of this case the said sub-section is important and hence it is extracted below:

(3) The extent of land which the kudikidappukaran is entitled to purchase under this section shall be three cents in a city or major municipality or five cents in

any other municipality or ten cents in a panchayat area or township:

Provided that where the land available for purchase in the land in which the kudikidappu is situate, or the land in which the kudikidappu is situate, is less than the extent specified in this sub-section, the kudikidappukaran shall be entitled to purchase only the land available for purchase or, as the case may be, the land in which the kudikidappu is situate.

As the Kudikidappu is situated in a Panchayat area appellant claimed that he has a right to purchase ten cents of land comprising of his Kudikidappu. Appellant contended that he occupied the hut in 1959 whereas the respondents contended that the occupation was made only after 4.3.1963. The said contention was made by the respondent because Ext.R1-mortgage deed dated 4.3.1963 was executed by him in favour of the brother-in-law of the appellant. It is submitted that the said mortgage is only for two cents of land and that the Kudikidappu falls within the aforesaid area of two cents.

The Land Tribunal and the Appellate Authority found that appellant came into occupation of the Kudikidappu much prior to Ext.R1 dated 4.3.1963. Appellant contended that Ext.R1-mortgage deed was created by the first respondent in collusion with appellants brother-in-law for the purpose of defeating the rights of the appellant. But the Division Bench of the High Court, in interference with the concurrent fact finding of the Land Tribunal and the Appellate Authority, came to the conclusion that appellant started occupying the Kudikidappu only subsequent to Ext.R1 dated 4.3.1963.

Even assuming that appellant started occupying the Kudikidappu only after 4.3.1963, the question is whether appellant is entitled to purchase ten cents of land which includes the Kudikidappu. There is no dispute that first respondent does not have an area of ten cents of land adjoining the Kudikidappu. The Division Bench of the High Court while repelling the claim of the appellant for purchasing ten cents of land, made the following observation:

It is clear that the extent the kudikidappukaran would be entitled to purchase would only be the extent that was the subject-matter of the mortgage. A mortgagee in possession is a person who is competent to grant permission within the meaning of Section 2(25) of the Kerala Land Reforms Act. Since on the materials available in this case it is clear that the permission was granted only by the mortgagee who had taken a mortgage of only two cents out of the property belonging to the land owner, it is clear that the right to purchase the kudikidappu conferred on the kudikidappukaran by the Kerala Land Reforms Act would only be in respect of the land held by the mortgagee. That would only be two cents in this case.

In our view the Division Bench has committed an error of law in thinking that a Kudikidappukaran is entitled to purchase only so much of land which was in the possession of the person who granted the permission to occupy the Kudikidappu. Section 80A(1) says that notwithstanding anything to the contrary contained in any law for the time being in force, a Kudikidappukaran shall, subject to the provisions of this section, have the right to purchase the Kudikidappu occupied by him and lands adjoining thereto.

The extent of the land so purchasable by the Kudikidappukaran has been fixed as ten cents if the land is in a Panchayat. It is so provided in sub-section (3) of Section 80A of the Act, and the only condition on which the said extent can be reduced is envisaged in the proviso to the said sub-section. We have extracted the sub-section supra. The proviso shows that the extent would get reduced only if the land available for purchase is less than the extent specified in the sub-section. In such a situation the Kudikidappukaran will be entitled to purchase only the land available for purchase. Land available for purchase means the adjoining land available with the landowner for being purchased by the Kudikidappukaran. Here, there is no contention for the respondent that there is no land available beyond two cents. Merely because Ext.R1 mortgage deed is for two cents does not mean that the first respondent has no land beyond that extent.

It is admitted by the first respondent landowner that the Kudikidappu is situated in his land the extent of which is about 60 cents. Even if the person who granted permission to occupy the Kudikidappukaran had possession of two cents only at a time when he granted such permission it does not mean that the Kudikidappukarans rights would be reduced to such two cents, so long as the landowner had got more than ten cents of land available adjoining the Kudikidappu. Once the person in possession of the land has permitted the Kudikidappukaran to occupy the Kudikidappu he acquires all the rights conferred by the Act as Kudikidappukaran. First respondent continued to have possession over 60 cents of land and he cannot now contend that there is no land available beyond two cents for the Kudikidappukaran to purchase.

In the aforesaid view of the matter it is unnecessary for us to consider whether appellant was inducted into the Kudikidappu prior to Ext.R1 dated 4.3.1963. We therefore allow this appeal and set aside the impugned judgment of the High Court.

J
[K.T. Thomas]

J
[S.N. Phukan]

JUDIS