

**Muhammad Vs. Imbichibi**

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**Court :** Kerala

**Decided On :** Sep-09-1974

**Reported in :** AIR1975Ker32

**Judge :** P. Govindan Nair, C.J.,; V. Balakrishna Eradi and; G. Viswanatha Iyer, JJ.

**Acts :** Kerala Land Reforms Act, 1964 - Sections 2(25) and 79; Kerala Buildings (Lease and Rent Control) Act, 1965 - Sections 11(1)

**Appeal No. :** C.R.P. No. 1427 of 1972

**Appellant :** Muhammad

**Respondent :** imbichibi

**Advocate for Pet/Ap. :** K.N. Karunakaran and; K.G. Devarajan, Advs.

**Disposition :** Revision dismissed

**Judgement :**

**Viswanatha Iyer, J.**

1. This case has been referred to a Full Bench for consideration of the question whether a person occupying a portion of a building belonging to another with the latter's permission is a 'kudikidappukaran' as defined in Act 1 of 1964, hereinafter referred to as the Act.

2. According to the respondent, the petitioner is a tenant governed by the Kerala Buildings (Lease and Rent Control) Act, 1965, for short the Rent Control Act. He sought eviction of the petitioner under Section 11 of that Act on the ground that the petitioner had defaulted payment of rent. The petitioner inter alia denied that he is a tenant falling within the Rent Control Act and further urged that he is a 'kudikidappukaran' under the Act 1 of 1964. This contention of the petitioner was accepted by the Rent Control Court and also by the appellate authority. The respondent's petition for eviction was consequently dismissed. In further revision under Section 20 of the Rent Control Act the District Court took the view that the petitioner is not a 'kudikidappukaran', mainly on the ground that the petitioner was not in occupation of a 'hut' belonging to the respondent and relied on the decision of Madhavan Nair. J. in Ittiathi Kunjan v. Lakshmikutty Amma (1968 Ker LT 888) in support of this conclusion. This revision petition under Section 115, C.P.C. is filed against that order. The learned Single Judge who heard the matter considered the question for decision as fairly important and so referred it to a Division Bench. The Division Bench referred the question to a Full Bench.

3. To answer the question it is necessary to notice the nature of the schedule building and its location. The respondent has described the building in the rent control petition as (original in Malayalam omitted). Another portion in the same structure, is occupied by a stranger to this proceeding, and in a lean-to attached to that portion, a woman is carrying on a small trade. Whether the stranger is residing in the portion occupied by him or is carrying on a trade there is not clear from the evidence. The Rent Control Court has proceeded on the basis that the rooms in the building let to the petitioner are shop rooms. The case of the respondent is that the rooms were let out to the petitioner for carrying on a trade. However it is admitted that the petitioner is now residing there.

4. 'Hut' is defined in Explanation II to Clause (26) of Section 2 thus :

'(a) 'hut' means any dwelling house constructed by a person other than the person permitted to occupy it-

(i) at a cost at the time of construction not exceeding seven hundred and fifty rupees; or

(ii) which could have at the time of construction yielded a monthly rent not exceeding five rupees, and includes any such dwelling house constructed by the kudikidappukaran in accordance with the provisions of Section 79.'

and Section 2 (25) (b) which contains the relevant part of the definition with which we are concerned in this case runs thus :

'2. In this Act, unless the context otherwise requires.-

(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 ten-ant, on which he could erect a homestead and-

(a) .....

(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 easement attached thereto:'

We will assume without deciding that the purpose for which a building is used should normally be taken as the purpose for which the permission to occupy was given. Since the petitioner is admittedly residing in the rooms let, the only point to be considered is whether the petitioner is occupying a 'dwelling house'. The expression 'dwelling house' is not defined in the Act It generally means a premises which are suitable for all major activities of residential life particularly sleeping, cooking and feeding and which are actually used for those purposes. Every 'dwelling house' need not necessarily be the entirety of a single structure though it is normally so. The practice of constructing separate houses one above the other or one on the side of another under the same roof, each house being part of a single larger structure or part of a large building, is prevalent. It is not always necessary that the single structure should be a large building or a large structure.

The facts of this case disclose that the structure may also be comparatively small. Instances of what we may term composite houses are common these days as the idea of constructing flats is gaining popularity particularly in busy cities and towns. But even in olden days there have been such composite structures as in the case of street houses. Such houses are parts of a larger structure. What is to be considered is whether such houses can be said to be 'huts'. Since a 'hut' has been defined to be a 'dwelling house', it was argued that a flat or that part of a structure which is used for residence can be said to be a hut. We do not think this submission is correct. To understand the correct meaning and the content of the word 'hut' or 'homestead' in the Act it is necessary to find out the context in which these words have been used. For this purpose it is necessary to examine the other provisions in the statute pertaining to the 'kudikidappukaran' and 'kudikidappu' in the Act. 'Kudikidappu' is defined as 'the land and the homestead or the hut'. A 'homestead' according to the definition is a 'dwelling house' erected by the person permitted to have the use and occupation of any land for the purpose of such erection. There can be little doubt that where a person has been permitted the use and occupation of land for the purpose of erecting a 'dwelling house', the 'dwelling house' that is meant to be erected is a single structure. The definition of 'kudikidappu' will comprehend a 'hut' and it is reasonable to give to the expression 'hut' the same character and, content as that of a 'dwelling house' constructed by a person who has been permitted to do so. There is nothing in the Act which would militate against such a construction. It would therefore be proper to understand 'hut' as meaning a 'dwelling house' complete in itself and not a place which is merely a part of larger structure which can be used for residential purposes. Such a meaning would also accord with the popular meaning of the word 'hut'. 'Hut' is normally understood as a very small house complete in itself and low in cost. The word 'hut' conveys an idea quite different from a mere portion of a building or a larger structure which is used as a dwelling place. Nobody, we conceive, would refer to a flat or part of a street house even if complete in itself in that it provides necessary facilities for being used as a dwelling place, as a 'hut'. If we now turn to the other provisions in the statute we find that Section 79 of the Act gives the right to the 'kudikidappukaran' not merely to maintain and repair but to reconstruct the 'homestead' or 'hut' with the same or different materials. This reconstruction can

involve the increasing of the plinth area upto 50 per cent. In order that this provision may be effective it is necessary to understand the 'homestead' or 'hut' as a separate and complete structure. It is needless to say that the occupant of a portion of a structure may not be in a position to reconstruct the same in the manner envisaged by Section 79. Further a 'kudikidappukaran' is entitled to purchase the 'kudikidappu' and an adjoining area of 10 cents, 5 cents or 3 cents depending on its location in a Panchavat, Town or Municipality. Bearing in mind the definition of 'kudikidappu' as the land and the hut permitted to be occupied together with the easement attached thereto, and the fact that 'kudikidappukaran' is not only given fixity but also the right to purchase the 'kudikidappu' along with an adjoining area of the extent specified above, it is evident that what the Act has in contemplation is a separate structure complete in itself whether it be a 'homestead' or 'hut'. The purchase of adjoining land of the extent permissible would be unworkable if it is to be applied to dwelling places which form a part, at times a very minor part, of a bigger structure. It is possible to conceive large structures with a number of rooms each of which may be used as a dwelling place but the large structure may itself be on land which has only a very limited extent, say only 5 or 10 cents, including the plinth area of the building. If in such a structure there are half a dozen dwellers the provision for purchase would become unworkable. Further the construction excepting in very modern buildings is such that a sale of a part of a building is not often feasible. The view taken in (1968 Ker LT 888) that 'dwelling house' in the context connotes an entity in itself is, we think with respect, the correct view. The expression used by Madhavan Nair, J. in the decision 'not part of a big building' came up for comment at the bar. It was urged that the case considered by the Judge was one where a big building was involved and that the decision cannot be an authority for a general proposition. We do not think that this submission is well-founded. The principle settled by the decision is that a 'hut' or a 'homestead' for the purpose of the Act is an entity in itself. We hold that the petitioner is not a 'kudikidappukaran'.

5. The contention, that the entire building inclusive of the scheduled rooms will be a hut considering its cost of construction and therefore the decision in Ittiathi Kunjan's case, 1968 Ker LT 888 cannot govern the present question, is without any factual foundation and even assuming that the entire building would have cost

only less than Rs. 750 at the time of construction, that will not alter the conclusion in any way.

6. Lastly it was contended that the petitioner is protected by the second proviso to Section 11 (1) of the Kerala Buildings (Lease and Rent Control) Act. That proviso provides that if the tenant denies the title of the landlord or claims a permanent tenancy the Rent Control Court shall decide whether that denial or claim is bona fide. If it records a finding to that effect, the landlord must be referred to a suit. In this case there is no denial of the landlord's title. The very claim for a kudikidappu right implies an admission of the title of the landlord. Kudikidaopukaran is not a tenant as defined in the Kerala Buildings (Lease and Rent Control) Act. For claiming a right of permanent tenancy he must first be a, tenant. Even that is not admitted. Apart from such a claim of kudikidappu in the petition there is no other claim of a right of permanent tenancy. Thus, in the nature of the pleadings in this case there is no scope for applying the provisions of Section 11(1) of the Act.

7. No other point arises for consideration. Therefore, the Civil Revision Petition fails. The order of the revisional authority is upheld and the revision petition is dismissed. But, in the circumstances, we make no order as to costs.

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