Pathukutty Umma Vs. Koravalappil Pathummayi Umma and ors.

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SooperKanoon Citation : sooperkanoon.com/718677

Court : Kerala

Decided On : Jan-19-1984

Reported in : AIR1984Ker176

Judge : G. Balagangadharan Nair and; V. Bhaskaran Nambiar, JJ.

Acts : Kerala Land Reforms Act, 1964 - Sections 2(25)

Appeal No. : S.A. No. 582 of 1978-C

Appellant : Pathukutty Umma

Respondent : Koravalappil Pathummayi Umma and ors.

Advocate for Def. : V.R. Venkitakrishnan, Adv.

Advocate for Pet/Ap. : T.R. Govinda Wariyer and; K. Ramakumar, Advs.

Disposition : Appeal dismissed

Judgement :

Bhaskaran Nambiar, J.

1. An interpretation in the practical application of Explanation III to Section 2 (25) of Act I of 1964 arises for determination in this second appeal by the plaintiff in a suit for redemption and recovery of possession. The brief facts found by the courts below and thus binding on this court are these,

2. There is a small building in the plaint property. This was in the possession of the predecessor-in-interest of the defendants for over 50 years when Ap-punni, the original owner granted the lease to the mother of the sixth defendant in 1936. It was a building satisfying the definition of a 'hut' in the Kerala Land Reforms Act, for, the cost of construction did not exceed Rs. 750/- and the rent that would have been realised then did not exceed Rs. 3/- per month as well, While this lease of a hut, as it is now understood, was subsisting, the plaintiff, the owner, took an advance of Rs. 1500/-from the lessees and created a mortgage over the plaint schedule property including the hut already leased. The mortgage deed is Ext. A1 dt. 1-8-1960. In 1973, the plaintiff filed the suit for redemption.

3. True, the plaintiff is entitled to redeem the mortgage and a decree has been granted for redemption also. But, on redemption, can the plaintiff obtain possession of the entire property mortgaged or is he compelled to allow the defendants to remain in occupation of the hut and treat him as a kudikidappu-karan under Act I of 1964? This ques- tion can be answered only with reference to Explanation III to Section 2 (25) of Act I of 1964 which reads thus:--

'Where any kudikidappukaran secures any mortgage with possession of the land in which the kudikidappu is situate, his kudikidappu right shall revive on the redemption of the mortgage, provided that he has at the time of redemption no other homestead or any land exceeding 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.'

4. On the facts found, the courts below held that defendants 1 to 5 were originally given possession of only a hut, they had no other homestead, they were therefore kudikidappukars and that their rights revived when the mortgage is redeemed in view of the above Explanation III.

5. The defendants have (plaintiff has?) filed this Second Appeal and this court ordered notice under Section 100, C. P. C. on the following question of law:--

'(i) Whether the interpretation placed by the courts below on explanation. 3 to Section 2 (25) of the Kerala Land Reforms Act is sustainable in law ?

(ii) Whether explanation 3 of Section 2 (25) is applicable to cases where the person who secures the mortgage is not a kudi-kidappukaran on the date of the mortgage ?'

6. When the case came before our learned brother, Balakrishna Menon, J., the case was referred to a Division Bench. The reference reads thus:--

'The question involved in this second appeal is as to whether it is necessary for the purpose of Explanation III to Section 2 (25) of the K.L.R. Act that the kudikidappukaran securing the mortgage should be a kudikidappukaran as defined in the Act as amended or whether he should have been a kudikidappukaran as the law then stood.

The decision in Sainaba v. Narayanan (1970 Ker LT 912) does not deal with this aspect of the question raised by the counsel for the appellant. I consider the question important enough for decision by a Division Bench. This second appeal is therefore referred to a Division Bench.'

7. The counsel for the appellant contends that Explanation III to Section 2 (25) can only apply if a kudikidappukaran secures a mortgage and as there was no kudikidappukars in the Malabar area in 1960 when the mortgage was created, the primary condition to attract the explanation is not satisfied and therefore it cannot be called in aid to defeat the right of redemption. It may not be very correct to say that there were no kudikidappukars in the Malabar area before 1960. Under the Malabar Tenancy Act lessees of huts were tenants of 'ulkudi' and 'protected ulkudi' was given qualified protection. Moreover in the Kcrala Stay of Eviction Proceeding Act, 1957, Act I of 1957 there was a definition of kudikidappukaran borrowed from the T. C. Prevention of Eviction of Kudikidappukars Act, 1955 applicable to the Malabar area as well. However, let us understand the scope of the explanation,

8. Even then, the contention advanced, we are afraid, does not take note of either the object of the legislation or the effect of Explanation III.

9. Explanation III to Section 2 (25) is a statutory curtailment of the right of redemption allowed under the T. P. Act. It is inserted to achieve the avowed object of allowing the tenants to remain in possession notwithstanding the redemption of the mortgage. Viewed in this light, interpretation of the explanation poses no problem, The explanation provides that the kudikidappukaran should have secured a mortgage, and this kudi-kidappu right would revive on redemption and not before redemption. The crucial date for determining the rights of the parties is the date when the mortgage is redeemed. If, on that date, a prior lease can revive, and that leasehold partakes the character of a kudikidappu as defined under this Act, the redemption is restricted to the area outside this protected tenure. An extinction of the lease with the execution of the mortgage is statutorily revived when the mortgage is redeemed provided the lease-hold has on that date, all the incidents of a kudikidappu. A rigid construction frustrating the object of the legislation has to be avoided, just as a literal interpretation forsaking the express language of the section cannot be accepted. Striking a golden mean between those two extremes, the language of the law has to embrace both the letter of the law and the objectsand purpose of the Act.

10. We are fortified in the view we take by the observations of Balakrishna Eradi, J. (as his Lordship then was) in an unreported Division Bench ruling in Raphael Varghese v. Vareed Pappu (C. R. P. No. 921 of 1974) :--

'Counsel argued that since the right of purchase of the kudikidappu was for the first time conferred on tha kudikidappukars only by the amending Act XXXV of 1969 which also substituted a new definition for the term 'kudikidappukaran', the eligibility of a person for claiming the said right conferred on kudikidappukars by the amending Act should be determined only with reference to the state of things prevailing on the date of coming into force of the amending Act and the applicant should be granted relief if judged with reference to the facts Obtaining on that date he falls within the amended definition of kudikidappukaran. We think there is force in this contention. In the place of the original definition of the expression 'kudikippukaran' which was contained in Section 2 (25) of the Act prior to its amendment, a new definition has been substituted by the Amending Act XXXV of 1969 and by the same Act a new right has been conferred on kudikidappukars to purchase the rights of the landowner over the kudikidappu in the manner and subject to the terms laid down in Section 80-A of the Act. As per the new definition incorporated in Section 2 (25) the expression 'Kudikidappukaran' means, inter alia, a person who has neither a homestead nor any land exceeding in extent threa cents in any city or major municipality or five cents in any other municipality or 10 cents in any panchayat area or township, in his possession either as owner or as tenant, on which he could erect a homestead and 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. In using the present tense 'who has neither a homestead nor any land exceeding in extent.....' the Legislature has made it clear that what is relevant to be considered by the court is the state of things obtaining not at any point of time anterier to the date of commencement of Act XXXV of 1969 but as on the date of commencement of the Amending Act which introduced the new definition and also on the date of making the application before the Land Tribunal seeking the benefits conferred on kudikidappu-kars by the said Act. We see no warrant to restrict the scope of the definition in such a way as to read into it a limitation that only persons who satisfied the terms of the new definition as on the date of coming into force of Act 1 of 1964 as originally passed are to be regarded as 'kudikidappukars'.

11. One of us (Balagangadharan Nair, J.) in E. Puthiyakath Avokoya v. Mohammadkutty (1983 Ker LJ 669) explaining the scope of Explanation IV to Section 2 (25) of the Act observed thus :--

'However, he could be deemed to be a kudikidappukaran in respect of the homestead if only at the time of the redemption when he ceases to be a mortgagee he possesses the qualifications prescribed by Clauses (a) and (b). This is clear beyond doubt from the provisions of Explanation IV. It is also in keeping with the definition of kudikidappukaran. Until redemption, when alone his right to be in possession of the mortgage holding ceases, he has the homestead which he has erected. His right to the homestead would be determined only on redemption and the process of redemption requires, inter alia, the payment of compensation for the building, When that contingency happens Explanation IV comes into play and that would be the relevant point of time when his claim to be a kudikidappukaran would require consideration and if he satisfies the conditions in Clauses (a) and (b) of Explanation IV he shall be deemed to be a kudikidappukaran in respect of the homestead notwithstanding the redemption of the mortgage.'

12. We thus hold that for the purpose of Explanation III to Section 2 (25), the kudikidappukaran securing the mortgage has to be a kudikidappukaran as defined in the Act as amended when the mortgage is redeemed and as the defendants 1 to 5 in this case satisfied this definition, they were not liable to surrender their kudikidappu right at the time of redemption of the suit property. The Second Appeal fails and is dismissed, but in the circumstances of the case, no costs.