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Court : Kerala

Decided On : Dec-11-1973

Reported in : AIR1974Ker161

Judge : T.S. Krishnamoorthy Iyer,; K. Sadasivan and; N.D.P. Namboodiripad, JJ.

Acts : Kerala Land Reforms Act, 1964 - Sections 2(25) and 30B

Appeal No. : C.R.P. No. 825 of 1971

Appellant : Manni

Respondent : Moidu and ors.

Advocate for Def. : T.C. Mohandas and; M.A. Manoharan, Advs.

Advocate for Pet/Ap. : T.L. Viswanatha Iyer and; E.R. Venkateswaran, Advs.

Disposition : Petition allowed

Judgement :

Sadasivan, J.

1. The petitioner claiming herself to be a kudikidappukaran applied under Section 80-B of the Kerala Land Reforms Act, 1963 -- as amended by Act 35 of 1969 -- (shortly stated the Act), for the purchase of the kudikidappu occupied by her. The claim was opposed on the ground that the petitioner is holding the property under

a marupat, and as such she is a tenant and not a kudikidappukaran entitled to apply under Section 80-B. The Courts below upheld this plea of the respondent-jenmi land have dismissed the petition.

2. The C. R. P, has come up before us on reference by a Division Bench stating that the two Single Bench decisions on this point, Karthiayani Pilla v. Appipennu Mathu, 1965 Ker LT 1212 and Chozhil Vasudevan v. Sreemathi Amma, 1966 Ker LT 594 are irreconcilable. In 1965 Ker LT 1212. Raman Nayar, J., as he then was held that:

'the lessee of a dwelling house can be a kudikidappukaran provided that the other conditions required by the definition are satisfied.'

And in 1966 Ker LT 594, Raghavan. J., as he then was, held that :

'If a person either owns land or possesses land as a tenant, he is disqualified ;tp claim rights as a kudikidappukaran. Since the appellants are ioint owners of at least the family house, they are not kudikidappukaras'.

The two decisions, of course, are irreconcilable and conflicting.

3. We have considered the question from all relevant angles and we think that the decision in 1965 Ker LT 1212 reflects the correct position and has to be accepted in preference to the other. In the present case the petitioner was in enjoyment of the property (about 1 cent in extent) under an oral arrangement and while so she was asked to execute a pattom chit and on the 30th of July, 1946 she executed Exhibit B-1 in favour of the jenmi; she had already out up a building and at the time of Exhibit B-I she was residing in the building. The relevant clause in Exhibit B-1 runs :

(Original in Mallyalam omitted.) We have to see whether in spite of the fact that she is in occupation under a document of lease, she still possesses the requirements of kudikidappukaran contemplated in the Act, '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

The fact is not disputed that the land in question is only one cent in extent and that the petitioner has no other land or homestead anywhere within the panchayat. The building was erected by her with the permission of the landlord and the only change brought about by Ex. B-1 in the relationship between her and the jenmi, is that an obligation to pay rent was cast on her. The obligation to pay rent will, in no way, detract from her status as kudikidappukaran. The fact that she is allowed to occupy a little land around the kudikidappu, also will not militate against her status as a kudikidappu. About the obligation to pay rent, Raman Nayar, J., would observe in 1965 Ker LT 1212 (cited supra) that:

'The words 'with or without an obligation to pay rent' occurring in Section 2 (25) of Act 1 of 1964 -- here the word 'rent' is used in the ordinary sense of the word at the periodical payment made by a lessee to a lessor, the Act definition of rent in Section 2 (49) not being attracted, the subject matter of the transaction being like that of the lease in this case, only a dwelling house and not any land -- clearly show that the lessee of a dwelling house can be a kudikidappukaran provided the other conditions required by the definition are satisfied.'

4. In the case before us also the lease was essentially one in respect of the building and not the land. It would, therefore, be incorrect to call the petitioner a lessee as understood in the Transfer of Property Act and consequently a tenant coming within the definition in the Act. Tenant' under the Act is one who has paid or has agreed to pay rent or other consideration for his being allowed to possess and to enjoy any land; and 'rent' means, whatever is lawfully payable in money or in kind or in both by a person permitted to have the use and occupation of any land. It is, therefore, clear that unless the arrangement entered into is in respect of

the land, she cannot be called a tenant. Before Ext. B-I was executed the petitioner was in occupation of the one cent under an oral arrangement for her to erect a building thereon for her own occupation and in accordance with that the building was erected and she was in occupation thereof. In other words, permission was given by the landlord to have the use and occupation of a portion of the land for the purpose of erecting a homestead and such a person would come strictly within the definition of Kudikidappukaran in Section 2 (25) of the Act. The petitioner, is therefore, a kudikidappukaran entitled to the protection of the Act.

5. The petitioner has claimed 10 cents even though the property is only one cent in extent. To make good the deficit she has impleaded the neighbours also saying that after partition in the jenmi's tarwad, part of the property has fallen into their hands. This is an untenable position. Ex. B-1 was executed by the petitioner in favour of the mother of respondents 2 to 4 and after partition also she attorned to that party only. She can, therefore, claim fixity only as against that party and consequently will have to be content with the one cent which she is in possession of. The other respondents have unnecessarily been impleaded, as on no account could they be made answerable for the deficit 9 cents that the petitioner is claiming.

6. In the result, we set aside the order of both the Land Tribunal and the Appellate Authority and allow the petitioner's application under Section 80-B (1) of the Act in respect of the one cent covered by Ex. B-I. The parties will bear their respective costs.