

**Kandumuthan Vs. Krishnan**

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**Court :** Kerala

**Decided On :** Dec-17-1981

**Reported in :** AIR1982Ker313

**Judge :** G. Vishwanatha Iyer and; T. Kochu Thommen, JJ.

**Acts :** Kerala Land Reforms Act, 1964 - Sections 125(4)

**Appeal No. :** C.M.A. No. 127 of 1980

**Appellant :** Kandumuthan

**Respondent :** Krishnan

**Advocate for Def. :** T.L. Viswanatha Iyer, Adv.

**Advocate for Pet/Ap. :** K. Chandrasekharan,; P.N.K. Achan and; K. Vijayan, A

**Disposition :** Appeal allowed

**Judgement :**

**Viswanatha Iyer, J.**

1. This case has been posted before us on a reference made by a learned single Judge who felt that the decision in Achuthan Nair v. Raman (1979 Ker LT 119) may require re-consideration. The simple facts are the following:

The plaintiff on the basis of a gift deed Ext. A-1 claiming title to the plaint property filed a suit for recovery of the same with the building standing thereon on the allegation that the first defendant is in occupation of the building on a rental basis and that he has trespassed into the property and is taking the income. The first defendant denied the title of the plaintiff based on the gift deed. According to the defendant the donor had no right or title over the property. The property belonged to one Velayudhan and he gave the property to the defendant for the purpose of residence after putting up a house thereon. The allegation that the house has been let out to her was denied. There was also an alternative contention that in any event the defendant is entitled to kudikidappu right and she cannot be evicted from the building. After trial the Munsiff's Court found rightly in favour of the plaintiff, but holding that the defendant has got kudikidappu right dismissed the suit for recovery of possession. The appeal to the lower Court -- A. S. 133 of 1971 -- was also dismissed and thereupon the plaintiff filed a Second Appeal, S. A. 251 of 1974, before this Court. Since the case involves a consideration of the question of tenancy and/or kudikidappu this Court thought that in the light of the Full Bench decision in Ananthanarayana Iyer v. Paran (1976 Ker LT 403) (FB) the case must be remanded to the trial Court to dispose of the same afresh in the light of the Full Bench decision. On remand to the trial Court the questions of tenancy and kudikidappu were referred to the Land Tribunal. By the time the view that was taken in Ananthanarayana Iyer v. Paran (1976 Ker LT 403) (FB) was held to be incorrect by the Supreme Court and it was held that in all cases filed before 1-1-1970 the jurisdiction of the Civil Court to decide the rights of a tenant is not taken away. Applying this Supreme Court decision the Land Tribunal refused to record a finding and sent back the records with this answer. Thereafter the learned Munsiff went into the question over again and found that the gift deed relied on by the plaintiff is not valid and also that the first defendant is entitled to kudikidappu right. The plaintiff again appealed to the Sub-Court as A. S. 161 of 1977. The Sub-Court has again remanded the case to the trial Court holding that the Land Tribunal cannot go behind the order of remand passed in S. A. 251 of 1974 and the learned Munsiff was wrong in deciding the question without obtaining an answer from the Land Tribunal. The lower appellate Court also was of the view that the defence case is not that the gift deed is invalid, but that the question whether the donor has

got disposing power over the property is one that is attacked. Since the issue framed in the case does not reflect this question properly the issue relating to the validity of the gift deed was re-cast and the trial Court was directed to consider the question over again after giving opportunity to both the parties to let in fresh evidence, if any. It is this order that is challenged in this appeal.

2. The first question that arises for consideration is whether the answer furnished by the Land Tribunal in the reference made by the Munsiff was in any way illegal and if not illegal whether the trial Court was right in considering the question of the tenancy or kudikidappu set up by the defendant. From the facts stated earlier it is seen that the order of remand passed by this Court has been complied with by the learned Munsiff by referring the matter to the Land Tribunal. But when the reference was received by the Land Tribunal it is open to the Land Tribunal to consider whether he has got jurisdiction to decide the question. That will depend upon the statutory provision in Section 125 and the law declared by the Supreme Court in *Eapen Chacko v. Provident Investment Co.*, (1977 Ker LT 1): (AIR 1976 SC 2610). According to the interpretation of the section made by the Supreme Court the Civil Court, in respect of all cases pending on 1-1-1970 has jurisdiction to decide all questions which may otherwise be out of its jurisdiction by virtue of the Land Reforms Act. So when the Civil Court has got jurisdiction to decide that question it necessarily follows that the Land Tribunal was precluded from going into that question. That is what the Land Tribunal understood the scope of the decision in *Eapen Chacko v. Provident Investment Co.* (1977 Ker LT 1). This answer of the Land Tribunal satisfies the requirements of law even if the remand order enjoins the trial Court to refer the question to the Land Tribunal. In what manner the Land Tribunal should answer the question is not for the Civil Court to direct. If the Land Tribunal considers that according to law which it is bound to follow it has no jurisdiction to go into that question, the answer given by the Land Tribunal cannot be said to be illegal and this has been accepted by the Civil Court as required by Section 125 (6). So the remand order has been obeyed in letter and spirit by the trial Court and the trial Court's subsequent decision disposing of all the issues that arises for consideration cannot be said to be in any way in conflict with the order of remand. The decision in *Achuthan Nair v. Raman* (1979 Ker LT 119) proceeds on a different basis. In that case also there was an order of remand to

the trial Court requiring the trial Court to refer the matter to the Land Tribunal. The Land Tribunal refused to answer the question in view of the decision of the Supreme Court referred to above. The learned Munsiff thereafter referred the question over again to the Land Tribunal holding that the Land Tribunal cannot refuse to answer the question. The correctness of that decision was challenged in revision before this Court and in that case it was held that the order of remand has to be obeyed by the trial Court as well as by the Land Tribunal. The last paragraph in that judgment leaves open the question whether in view of Section 125 (4) it is open to the Land Tribunal to refuse to decide the question of tenancy on a reference being made to it under Section 125 (3). It is that question that arises here. In view of the pronouncement of the Supreme Court in *Eapen Chacko v. Provident Investment Co.*, (1977) Ker LT 1 : (AIR 1976 SC 2610) in respect of questions of tenancy or kudikidappu that arise in suits before 1-1-1970 it is not for the Land Tribunal to decide that point because that decision of the Supreme Court clearly states that in respect of such matters the jurisdiction of the Civil Court is not taken away. A harmonious construction of Sub-sections (1) to (6) of Section 125 is what has been attempted to be done in that case. The jurisdiction of the Land Tribunal is limited to the consideration of such questions only if such questions are raised in suits filed after 1-1-1970. It follows that the Land Tribunal has no jurisdiction if the question referred is one that has arisen in suit filed before 1-1-1970. If the Land Tribunal has no jurisdiction the Civil Court cannot invest it with the jurisdiction by referring that question to that Tribunal. The jurisdiction depends upon the statute which constitutes the Tribunal and sets out its powers. So whether the question is referred by the trial Court on its own accord or by virtue of the order of remand passed by the appellate Court so far as the Land Tribunal is concerned it can only act in accordance with law. That is what has been done by the Land Tribunal in this case. So Section 125 (4) has to be understood consistently with the other provisions of the Act and therefore it is open to the Land Tribunal to take the view that it has no jurisdiction to go into the question referred to it.

3. Then the question is whether the Civil Court after receiving the answer was justified in going to the question of tenancy or kudikidappu since the question has arisen in a suit filed before 1-1-1970. In the light of the above decision of the

Supreme Court the Civil Court has got jurisdiction to go into such a question. So the learned Munsiff was right in going to that question and pronouncing upon it and basing its decision on such a finding. There is no question of disobeying the order of remand in that case. The order of remand was complied with the answer of the Tribunal has been requested and the learned Munsiff has gone into the question which he was competent to go into. So there cannot be any legal objection to the decision of the Munsiff for the Sub-Court to set aside stating that the order of remand has not been complied with. The view of the learned Subordinate Judge in these circumstances is clearly wrong.

4. The learned Subordinate Judge has given one more reason to remand the case. According to that Court the validity of the gift deed is not challenged on the ground that the donor did not execute the gift or that the donor was not a free agent. According to the pleadings the validity of the gift deed is challenged on the ground that the donor has no right over the property. That is a matter to be decided on the relationship of the parties, the persons to whom the property originally belonged and the derivation of title claimed by the donor in the gift deed. For this purpose it is not necessary to remand the case. It is open to the subordinate Judge himself to recast the issue if necessary, and dispose of the case on the evidence on record.

In the result the appeal is allowed and the order of remand passed by the subordinate Judge is set aside. That Court will take back the appeal A. S. 161 of 1977 to file and dispose of it in accordance with law and in the light of the observations made above. There will be no order as to costs

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