

L. VASANTHA KUMARI

A

v.

BALAMMAL AND ORS.

NOVEMBER 30, 1994

[K. RAMASWAMY AND N. VENKATACHALA, JJ.]

B

Kerala Land Reforms Act, 1964:

Section 2(25) Explanation II-A—'Kudikidappukaran'—Meaning of—Any one satisfying the requirements of Explanation II-A and its proviso would be deemed 'Kudikidappukaran'.

C

Words and Phrases:

'Kudikidappukaran'—Meaning of—In the context of Kerala Land Reforms Act, 1964.

By a sale deed S sold certain property to V. By an agreement respondent agreed to purchase the said property from V. Based on that, he filed a suit for specific performance which was decreed and ultimately confirmed by the High Court. Thereafter the respondents filed a suit for possession on the ground that the appellant trespassed into the land and the hut and therefore, she was liable to be ejected. The suit was decreed. On appeal it was reversed. The High Court in second appeal confirmed the decree passed by the trial court. Hence this appeal.

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Allowing the appeal, this Court

HELD : 1. The appellant is a deemed Kudikidappukaran within the meaning of Explanation II-A to section 2(25) of the Kerala Land Reforms Act, 1964. As such the appellant is not liable to be ejected by the decree. Thereby the suit is not sustainable and the decree granted by the trial court and affirmed by the High Court is clearly illegal.

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[216 H, 219 C]

G

2. As to operation of Explanation II-A what is relevant to be considered is that the person claiming to be deemed Kudikidappukaran, he/she shall be in occupation of the land and the dwelling house as on August 16, 1968, whether constructed by himself or by herself or by any of his predecessors-in-interest or it may belong to any other person. Another condition to be fulfilled is that the person

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A continued to remain in possession till January 1, 1970. On satisfying these requirements the person in possession shall be deemed to be Kudikidappukaran. In the plaint it was admitted that the appellant trespassed in the building on November 4, 1955 and took residence therein. In view of that admission since she came into the occupation of the building as on November 5, 1955 much before the specified date and remained to be in possession even till date, the necessary conclusion would be that she became the deemed Kudikidappukaran.

[218 E to G]
Kerala Land Reforms Act, 1964

—S. Appukuttan v. Thundivil Janaki Amma and Anr. [1988] 2 SCC 372, relied on, in this case.

C CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1911 of 1984.

From the Judgment and Order dated 28.11.83 of the Kerala High Court in S.A. No. 686 of 1978-C.

D By a sale deed dated 15.10.1956, Subramonian Pillai sold the property in question to one Vaikuntam Pillai. By agreement dated October 15, 1956, the respondent agreed to purchase the property from Vaikuntam Pillai. Based on that agreement, he filed a suit for specific performance which was decreed and ultimately confirmed by the High Court on November 18, 1963. Thereafter, the respondents filed O.S. No. 76/67 on the file of Munsif Court, Trivandrum, for possession on the ground that the appellant trespassed into the land and the hut on November 4, 1955 and that therefore, she is liable to be ejected. The suit was decreed by the trial court.

F On appeal, it was reversed and in Second Appeal No. 686/78, by judgment dated November 28, 1983, the High Court reversed the decree of the appellate court and confirmed that of the trial court. Thus this appeal.

G The question is whether the appellant is deemed a Kudikidappukaran within the meaning of Explanation II-A of section 2(25) of the Act. I of

at the time of 1964 as amended by Act 35 of 1969. Section 2(25) defines Kudikidappukaran as :-

"(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 tenant, on which he could erect a homestead and -

Though section 2(25) defines Kudikidappukaran, the definition by (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 or

(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 of the hut so permitted to be erected or occupied together with the easements attached thereto."

Explanation II-A was introduced by Amendment Act of 1972 with retrospective effect. Explanation II-A reads thus:

Explanation II-A. Notwithstanding any judgment or decree of a court or order of any court, a person, or any of his predecessors-in-interest, or any of his predecessors-in-interest, shall be deemed to be in occupation of the land and building thereon (whether constructed by him or by any other person) and continued to be in such occupation till the 1st day of January, 1970, shall be deemed to be a kudikidappukaran.

The proviso was also added thereto :-

(a) where the dwelling house has not been constructed by such person or by any of his predecessors-in-interest if -

This Court in *Thandiyil Janaki Amma and Anr. v. Thandiyil Janaki Amma and Anr.* (1972) 2 SCC 373 interpreting Explanation II-A, held that the restricted interpretation cannot be given to of construction, exceeding seven hundred and fifty rupees, or

- A (ii) such dwelling house could have, at the time of construction, yielded a monthly rent exceeding five rupees; or
- B (b). if he has a building or is in possession of 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, either as owner or as tenant, on which he could erect a building."

C Though section 2(25) defines Kudikidappukaran, the definition by operation of the Amendment Act and introduction of Explanation II-A has no materiality for the purpose of this case. The Explanation II-A is only material. It contemplates in the main part of the definition of Kudikidappukaran and notwithstanding any judgment, decree or order of any court, a person, who on the 16th day of August 1968, was in occupation of any land and the dwelling house thereon whether constructed by him or by any of his predecessors-in-interest or belonging to any other person and continued to be in such occupation till the first day of January, 1970, shall be deemed to be Kudikidappukaran. It would appear that there was a chain of decisions of the Kerala High Court interpreting in one way or the other of the definition of Kudikidappukaran and to remove the doubts, thus cropped up the need for legislature to step in and introduce Explanation II-A, with retrospective effect. As to operation of this Explanation, what is relevant to be considered is that the person claiming to be deemed Kudikidappukaran, he/she shall be in occupation of the land and the dwelling house as on August 16, 1968, whether constructed by himself or by herself or by any of his predecessors-in-interest or it may belong to any other person. Another condition to be fulfilled is that the person continued to remain in possession till January 1, 1970 under general Clauses Act, male includes female. On satisfying these requirements the person in possession shall be deemed to be Kudikidappukaran. In the plaint it was admitted that the appellant trespassed in the building on November 4, 1955 and took up residence therein. In view of that admission since she came into the occupation of the building as on November 5, 1955 much before the specified date and remained to be in possession even till date, the necessary conclusion would be that she became the deemed Kudikidappukaran.

H This Court, in *S. Appukuttar v. Thundiyil Janaki Amma and Anr.*, [1988] 2 SCC 372, interpreting Explanation II-A introduced by 1972 Amendment Act held that the restricted interpretation cannot be given to

the definition under Explanation II-A. The Explanation equates an occupant of a homestead or a hut thereon during the relevant period with a Kudikidappukaran as defined in the main clause. Accordingly, anyone satisfying the requirements of Explanation II-A and its proviso would be statutory deemed as one permitted to occupy a homestead or a hut thereon as envisaged in sub-clause (a) and (b) of section 2(25) and would automatically be entitled to have the status of Kudikidappukaran and to all the benefits flowing therefrom. A B

In that view of the matter and in view of the admission of the respondents in the plaint and the interpretation given herein before, it must be held that the appellant is a deemed Kudikidappukaran within the meaning of Explanation II-A to section 2(25) of the Kerala Land Reforms Act. As such the appellant is not liable to be ejected by the decree. Thereby the suit is not sustainable and the decree granted by the trial court and affirmed by the High Court is clearly illegal. The appeal is accordingly allowed and the suits stand dismissed. Parties to bear their own costs throughout. C

G.N.

Appeal allowed. D