

Eramakkaveetil Puthiyakath Avukeya Vs Chakkacham Veetil Mohammed Kutty and Another

Court: High Court Of Kerala

Date of Decision: Nov. 18, 1983

Citation: (1983) KLJ 669

Hon'ble Judges: G. Balagangadharan Nair, J

Bench: Single Bench

Advocate: V.P. Mohankumar, K.P. Sreekumar and V. Ramkumar, for the Appellant; A.P. Chandrasekharan and G. Sreekumar for Respondent No. 1 and Government Pleader, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Balagangaharan Nair, J.

The short point that falls to be decided in the revision is whether a mortgagee is entitled to maintain an application

for purchase of ""kudikidappu"" u/s 80B, Land Reforms Act, during the subsistence of the mortgage. It arises under the following brief facts: On 3rd

December 1968 the Petitioner possessory mortgaged a piece of land measuring 4 1/2 4 koles to the Respondent for Rs. 250 under Ext. B-1

for a period of 3 years. It provided for the payment of compensation on redemption in case the Respondent constructed any building or made any

other improvements. The Respondent has admittedly constructed a residential building in the property. On 12th March 1976 he brought the

application u/s 80B claiming that he was a kudikidappukaran of the building and that he was entitled to an order for its purchase. The application

was resisted by the Petitioner contending that the Respondent was not a kudikidappukaran and that even if he was one his prayer was premature

as the mortgage was still subsisting and had not been redeemed. I am not referring to the other contentions between the parties which were alive

before the authorities below as they are now of no relevance.

2. The Tribunal allowed the application finding that the Respondent was a mortgagee with possession of the land, that he had erected a homestead

and has been residing therein, that he has no other kudikidappu or residential building or land, exceeding 10 cents or income exceeding Rs. 2,000

a year and that he was a kudikidappukaran. It held that Explanation IV to Section 2(25) of the Act supported the Petitioner's claim. On appeal

preferred by the Petitioner the Appellate Authority (Land Reforms), Kozhikode confirmed the order of the Tribunal.

3. For the disposal of the revision the only provision that requires to be considered is Explanation IV to Section 2(25) which defines

kudikidappukaran". The explanation reads:

Where a mortgagee with possession erects for his residence a homestead, or resides in a hut already in existence, on the land to which the

mortgage relates, he shall, notwithstanding the redemption of the mortgage, be deemed to be a kudikidappukaran in respect of such homestead or

hut, provided that at the time of the redemption--

(a) he has no other kudikidappu or residential building belonging to him, 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; and

(b) his annual income does not exceed two thousand rupees.

The Respondent is a mortgagee with possession and he has erected for his residence a homestead on the mortgage holding. 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. The

Petitioner has not so far sought redemption of the mortgage and the occasion for determining the Respondent's claim to be a kudikidappukaran

has not also arisen. As it is the application does not lie and has to fail on that count. Whether he would be deemed to be a kudikidappukaran at the

time of redemption would depend upon the circumstances existing at the time and it would be premature and out of place to pronounce upon

questions that have not arisen.

I reverse the orders of the authorities below and dismiss O.A. No. 2560 of 1976. Parties will bear their costs.