

(1972) 11 KL CK 0036

High Court Of Kerala

Case No: C.R.P. No. 444 of 1972

Kunhi Moideen Haji

APPELLANT

Vs

Andi And Another

RESPONDENT

Date of Decision: Nov. 9, 1972**Acts Referred:**

- Kerala Land Reforms Act, 1963 - Section 103, 2, 2(25)

Citation: (1974) KLJ 101 : (1974) KLJ 1**Hon'ble Judges:** V. Balakrishna Eradi, J**Bench:** Single Bench**Advocate:** T.C. Mohandas and P.K. Suresh, for the Appellant; K.P. Radhakrishna Menon and K.K. Ravindranathan, for the Respondent**Final Decision:** Dismissed

Judgement

Justice V. Balakrishna Eradi

1. This revision petition arises out of a proceeding under S. 80B of the Kerala Land Reforms Act instituted before the Land Tribunal, Tellicherry by the respondents herein praying for the purchase of the site of a kudikidappu occupied by them on a property belonging to the revision petitioners. The main defence taken to the said application by the revision petitioners was that the applicants were holding the property as lessees under a registered marupat dated 3rd March, 1960 and that it is not open to a person having a leasehold interest in a land to claim the status of a kudikidappukaran under S.2 (25) of the Land Reforms Act. This contention was negatived by the Land Tribunal as well as by the Appellate Authority (Land Reforms), Kozhikode. Hence the revision petitioners have come up to this court under S.103 of the Act. It is true that an extent of 1/4 cent of land was leased out by the revision petitioners in favour of the respondents herein as per a registered marupat dated 3rd March, 1960 for the specific purpose of enabling the respondents to construct a residential house and live on the property. The question is whether by reason of the

fact that the respondents had thus acquired a leasehold interest in the land they are disqualified from claiming the status of kudikidappukars under S.2 (25) of the Land Reforms Act. It is very strongly urged on behalf of the revision petitioners that the definition contained in clause (25) of S.2 of the Act does not contemplate that a kudikidappukaran will have "possession" of the land on which he has been permitted to put up a homestead," since the expression used in the definition clause is "use and occupation". According to the counsel for the revision petitioners the legislature has maintained a deliberate distinction between "possession" and use and occupation. Counsel laid stress on the fact that with reference to the character of the custody which the landlord has in respect of the land the legislature has employed the expression "possession" in the very same clause. It is argued that in using such differential terminology the legislature has made it clear that what is transferred by the owner of the land to the kudikidappukaran is not the entirety of the possession as would be the case if a lease were to be granted but only something very much less, which, according to the learned advocate, has been characterised by the words "use and occupation". Although this argument may prima facie look attractive its glamour fades when one turns to the definition of "rent" contained in clause (49) of the very same section. Under the scheme of the Act what is agreed to be paid by a tenant to the landlord for his being allowed to be in possession and enjoyment of the latter's land is "rent". But "rent" is defined as 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 belonging to the person so permitting, and includes michavaram, but does not include customary dues. Hence the amount payable by a lessee to the landlord viz., the rent, is described in the Act as the consideration agreed to be paid for the permission granted to the lessee to have the "use and occupation" of the land belonging to the lessor. It is thus seen that even the possession of a lessee is referred to by the legislature as "use and occupation" while defining the expression "rent". It is not therefore possible to accept the petitioners' contention that any clear distinction has been maintained by the Act while using the two expressions, namely, "possession" and "use and occupation" and they are intended to convey different meanings. On the contrary the two expressions appear to have been used as conveying more or less the same meaning and content.

2. Now turning to the definition of "kudikidappukaran" contained in S.2 (25) the requirements thereof are satisfied if a person shows that he 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 that he has been permitted to have the use and occupation of a land belonging to another with or without an obligation to pay rent by the person in lawful occupation of such land. There is nothing in the said definition to indicate that the permission granted by the owner of the land or by the person

having lawful possession thereof should not be by way of grant of a lease and that the creation of any interest in any immovable property or the acquisition of any interest on the property by the grant of such permission would disqualify the grantee from claiming the status of a kudikidappukaran. In this context it is very pertinent to note that the definition of the expression "kudikidappukaran" underwent a complete change by reason of the amendment introduced in Act 1 of 1964 by Act 35 of 1969. In the above definition clause as it stood prior to the said amendment the legislature had incorporated a condition that the person who claims the status of a kudikidappukaran on the strength of his having been permitted to have the use and occupation of the land of another for the purpose of erecting a homestead should otherwise have no interest in the land. This condition was deliberately deleted by the legislature when the definition clause was completely recast by the amending Act 35 of 1969. Whatever might have been the position which obtained prior to the commencement of Act 35 of 1969, under the definition of "kudikidappukaran" as it then stood, I feel no doubt at all that as per the amended definition now contained in the Act there is no warrant for reading into the said provision any condition that the person claiming the status of a kudikidappukaran should not have any interest in the land on which his homestead is situated. I find that a Full Bench of this court has taken this view in the decision reported in Manni v. Moidu, 1973 KLT. 20, and ordinarily I, need have only referred to the decision and applied the said legal position to the present case. I, however, considered it necessary to deal with the arguments of the petitioners at some length because it was very strongly contended by the counsel for the petitioners that the Full Bench Decision requires reconsideration. The said contention does not appeal to me in the light of what I have observed above.

3. The decision of the Appellate Authority that the respondents are entitled to the benefits conferred under S.808 of the Act is perfectly correct. The civil revision petition is therefore dismissed. But, I direct the parties to bear their respective costs. Dismissed.