

(1953) 09 KL CK 0007

In the High Court Of Kerala

Case No : Second Appeal No. 297 of 1125

Chakkappan Kunhuvareed

APPELLANT

Vs

Janki Amma and Others

RESPONDENT

Date of Decision : 30-09-1953

Acts Referred:

Cochin Verumpattomdars Act, 1118 — Section 8(1)
Transfer of Property Act, 1882 — Section 108

Citation : AIR 1954 Ker 316

Hon'ble Judges : M.S. Menon, J

Bench : Single Bench

Advocate : C.S. Ananthakrishna Iyer, for the Appellant; M. Narayana Menon and V. Sankara Menon, for the Respondent

Final Decision : Dismissed

Judgement

Menon, J.—O.S. No. 429 of 1120 of the Court of the District Munsiff of Irinjalkuda was a suit for eviction u/s 8(1)(f), Cochin Verumpattomdars Act, 8 of 1118:

(1) No suit for eviction of a verumpattomdar from his holding or any portion thereof shall lie except on the following grounds:

(i) That at the end of the agricultural year the jenmi or any intermediate landlord requires the holding or part thereof, except the Kudiyruppu, bona fide for building residential quarters for the use of himself or for any member of his family or tarwad or thavazhi who has a beneficial or proprietary interest therein;

Provided that in cases falling under Clause (SIC) and (f) where only a part of the holding has been encroached upon or is required, as the case may be, the eviction shall be from such part of the holding only.

Explanation - The wife or husband and the children of the lessor shall be deemed to be members of the lessor's family having a beneficial and proprietary interest in the holding.

2. The Plaintiff died during the course of the litigation and the main contention on behalf of the Appellants is that his legal representatives are not entitled to any relief in the suit as the Plaintiff sought eviction only on the ground that he wanted the site for his own residence and (SIC) on the ground that he wanted it for the residence of himself and his family: (After quoting an extract from para 6 of the plaint in Malayalam script which is omitted here, the judgment proceeds:)

3. I do not think there is any substance in this contention. The residence contemplated by the Plaintiff must be taken to be a residence consonant with his normal way of life, not in solitary and individual isolation, but as the head of his family in company and commensality with his wife and children. As the lower court has pointed out the evidence given by the Plaintiff before his death (as P.W. 1) itself indicates that the house he intended to construct was for the residence of himself and his wife and children.

4. Section 11(1) of the Bombay Restriction Act, 1939, reads as follows:

No order for the recovery of possession of any premises shall be made so long as the tenant pays or is ready and willing to pay rent to the full extent allowable by this Act and performs the other conditions of the tenancy:

Provided that nothing in this section shall apply where the tenant has committed any act contrary to the provisions of Clause (o) or Clause (p) of Section 108, T.P. Act, 1882, or has been guilty of conduct which is a nuisance or an annoyance to any adjoining or neighbouring occupiers, or where the premises are reasonably and bona fide required by the landlord either for the erection of building or for his own occupation or for the occupation of any person for whose benefit the premises are held, or where the landlord can show any cause which may be deemed satisfactory by the Court.

And in - "Radio Technology Institute v. Pandurang Baburao AIR 1946 Bom 212 (A), the Bombay High Court has held:

It is next contended that the word "his own occupation" in the section means that the premises must be required by the landlord for his own occupation, that Plaintiff 1 is now dead and Plaintiff 2, who is his son, does not require these blocks for his own occupation. On that point evidence was led, and Plaintiff 1, while he was alive, went into the box and stated that his family consisted of his son, his widowed sister, her two daughters, two daughters of his daughter and his cousin. The learned Judge was presumably satisfied with the evidence that those persons were the Plaintiff's dependents, and that therefore they were entitled to live along with the Plaintiff. In my opinion the words "his own occupation" mean occupation of himself and all persons who are dependent on him. There is, therefore, no substance in that contention.

5. The only other contention pressed before me was that the area from which eviction has been ordered is excessive and that it should be reduced. The Commissioner and the two courts below are agreed on this point and I see no

reason to differ from their conclusion. The Second Appeal fails and is dismissed with costs.