
(1970) 11 KL CK 0006
In the High Court Of Kerala
Case No : O.P. No. 2304 of 1968

Kochuthommen Thomas

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 25-11-1970

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala Land Reforms Act, 1963 — Section 2(25), 80

Citation : (1971) KLJ 330

Hon'ble Judges : P. Govindan Nair, J

Bench : Single Bench

Advocate : V.K.K. Menon, K.K. Paulose and Ephraim Ambooken, for the Appellant; M.N. Sukumaran Nair, for the Respondent

Judgement

P. Govindan Nair, J.—The question in this case is whether the order Ex. P-4 passed by the Tahsildar holding that the 4th respondent can be registered as a kudikidappukaran u/s 80 of the Kerala Land Reforms Act, 1963, and the appellate order Ex. P. 6 confirming it are liable to be set aside in proceeding under Art. 226 of the constitution. The fourth respondent applied u/s 80 of the Kerala land Reforms Act for registering him as kudikidappukaran with respect to a homestead said to be in survey No. 7/23 in Thiruvandoor village. The petitioner is the owner of that property and he objected. One of the contentions of the petitioner was that the 4th respondent owned 14 cents of land in survey No. 223/5 in Pandanad village and that the fourth respondent was therefore not a kudikidappukaran within the meaning of section 2(25) of the Kerala Land Reforms Act.

2. The 3rd respondent who passed Ex. P-4 order came to the conclusion that the 4th respondent was not the proprietor of the land which, it was alleged, was set apart to him in the family partition deed of 1117 M.E. and therefore negated the contentions of the petitioner. The appellate authority came to the conclusion that right over 14 cents of land had been conferred on the respondent in 1117

M.E. as per the family partition deed. The appellate authority however came to the further conclusion that he has no possession of the land and therefore held that he is a kudikidappukaran within the meaning of section 2(25) of the Kerala Land Reforms Act, 1963. Section 2(25) is in these terms:

S.(25). "kudikidappukaran" means a person who has neither a homestead nor any land, either as owner or as tenant in possession, on which he could erect a homestead and--

(i) 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

(ii) 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.

but otherwise has no interest in the land; and "kudikidappu" means the land and the homestead or the hut so permitted to be erected or occupied together with the easements, attached thereto:

Provided that a person shall not be deemed to be a kudikidappukaran if the aforesaid permission was granted after the 11th day of April, 1957, by a mortgagee in possession or by a tenant from whom the land in which the kudikidappu is situate is liable to be resumed:

Provided further that a person shall not be deemed to be a kudikidappukaran if the aforesaid permission was granted in respect of any hut not belonging to him and situate--

a) in a plantation; or

(b) in any area of land which is appurtenant to a mill, factory or workshop,

and in connection with the employment of such person in the plantation, mill, factory or workshop, unless he was immediately before the commencement of this Act, entitled to the rights of a kudikidappukaran or the holder of a protected ulkudi or kudikidappu under any law then in force.

If the applicant is the owner of the land on which a home-stead can be raised, he will not be a kudikidappukaran. But the mere ownership of land may not be sufficient to hold that he is not a kudikidappukaran. It may be shown that even if he is the owner of a certain piece of land, no homestead can be raised in that piece of land. Such a situation can arise as I conceive, due to various reasons. Though prima facie the property might stand in the name of a person he might have lost title and therefore the land may not be available for the purpose or raising a homestead or the land may be unsuitable for raising a homestead. The land may be in the possession of a lessee from whom it is not possible to recover it or in the possession of somebody else from whom it is not practicable to obtain possession. Whether there are any such factors in this case and as to who should

establish the existence of one or other of these factors has not been considered or adverted to by the authorities. The Orders Exts. P4 and P6 cannot therefore stand. I set aside those orders and direct the third respondent to take back the application of the 4th respondent on his file and deal with it afresh after affording reasonable opportunities to the 4th respondent as well as the petitioner to state and prove their respective cases in the light of what I have I stated above and pass appropriate orders.

This Original Petition is ordered as above. There will be no order as to costs.