

(1994) 10 MAD CK 0009
In the Madras High Court

Puthalath Perunthodi Lakshmi

APPELLANT

Vs

Kalluparambath Kochunni and Another

RESPONDENT

Date of Decision : 21-10-1994

Acts Referred:

Mahe Land Reforms Act, 1968 — Section 113

Citation : (1995) 1 MLJ 131

Hon'ble Judges : K.A. Swami, C.J;K.A Swami, C.J

Bench : Division Bench

Judgement

K.A Swami, C.J.—This civil revision petition is preferred u/s 113 of the Mahe Land Reforms Act, read with Section 115 of the Code of

Civil Procedure, 1908 against the order dated 22.8.1986 passed by the Appellate Authority (Land Reforms), Mahe, in A.A. No. 2 of 1985

affirming the preliminary order dated 7.1.1985 passed in original application 1/82-K by the Land Tribunal, Mahe.

2. The Land Tribunal, Mahe by the aforesaid order has held that the petition scheduled house satisfied the requirement of Sub-clause (ii) of Section

2(24) of the Mahe Land Reforms Act, 1968 as substituted by the Mahe Land Reforms (Amendment) Act, 1980, that at the time of construction of

the house, it had fetched a rent of Rs. 6 only, therefore, it was a hut as defined in the aforesaid Clause (24) of Section 2. Accordingly, it has

allowed the petition and held that the 1st respondent who is the petitioner in the original application is a ""Kudikidappukaran"" and he is eligible to

purchase the Kudikidappu.

3. The tribunal has held that no evidence was produced to prove that the original "K" Chit (Ex.B-4) was terminated that the petitioner in the

original petition was not continued as Kudikidappukaran; that the petitioner herein had not produced the alleged mortgage deed to substantiate his

stand that the petitioner in the original application was permitted to reside in the house as mortgage; that the mortgage must have been redeemed

long before the original application was filed, that even after the redemption was ordered, the applicant continued to reside in the house, therefore

his right of kudikidappu continued; that even after the redemption he can maintain the application; that no evidence was also adduced to

substantiate that the report of the Revenue Inspector made to the effect that the house was constructed after the property came into the possession

of the appellant viz., the revision petitioner herein, that the cost of the house at the house at the time of construction was Rs. 1,120.60 and as such,

it would have fetched a monthly rent of Rs. 6, could not be considered as correct. The Tribunal allowed the application. The Appellate Authority

also approached the case on the same lines and held that the house in question fell within the purview of Section 2(24)(ii) of the Mahe Land

Reforms Act, 1968 as amended by the Mahe Land Reforms (Amendment) Act, 1980 and consequently dismissed the appeal.

4. It is inter alia contended by learned Counsel for the revision petitioner that the petitioner in the original application was not eligible to claim the

right to purchase Kudikidappu u/s 88-B of the Mahe Land Reforms Act, 1968 as inserted by Mahe Land Reforms (Amendment) Act, 1980

(hereinafter referred to as the Act); that he was not the Kudikidappukaran, that the house in question was not a hut as defined in Section 2(24),

Explanation I of the Act: that the house was mortgaged to him and the mortgage had not been redeemed on the date the application was filed, that

even if it is presumed that the house was leased earlier to the mortgagee though in fact, it was not leased, he ceased to be the lessee on the

execution of the mortgage, as such he was not entitled to maintain the petition u/s 88-B of the Act to claim relief for purchasing the land, that the

petition was filed on 28.1.1982 and much later, the suit for redemption of the mortgage was decreed, as such the Appellate Authority was not

justified in proceeding under the presumption that the mortgage must have been redeemed much earlier, that the application filed by the revision

petitioner for producing a registered deed of mortgage executed between the parties relating to the property in question was not considered, that

the petitioner in the original petition admitted in the cross-examination that he was a daily wage earner in a company and he was paid daily Rs.

9.35 and as such, his annual income exceeded Rs. 2,000 therefore, he was not eligible to claim the right as Kudikidappukaran, that the cost of

construction of the house exceeded Rs. 750 and as such having regard to the cost of construction, the house would have fetched a monthly rent of

more than Rs. 750.

5. These contentions are resisted by learned Counsel appearing for the first respondent- petitioner in the original petition.

6. At the outset, it must be pointed out that both the tribunal and the Appellate Authority have acted arbitrarily in ignoring the decree of the civil

court passed in O.S. No. 12 of 1982 by the District Munsif Mahe, on 9.2.1983. That was a suit between the parties for redemption of the very

same property in question based on a registered mortgage deed dated 3.7.1967. The suit was filed on 12.10.1982, where as the application to

produce a registered copy of the mortgage deed was filed on 28.1.1982 before the land tribunal. Even then, the land tribunal and the Appellate

Authority ignored such an application for production of a registered mortgage deed and the decree of the civil court and allowed the application.

Both the Authorities have also ignored the admission made by the petitioner in the original application viz., Kochunni, son of Kittappan. He has

specifically admitted in his evidence that he has been residing in the house from 1966. There was a suit against him or redemption in Mahe court,

viz., O.S. No. 12 of 1982. The judgment was pronounced on 9.2.1983. It was ordered to redeem after depositing the amount. The scheduled

property in the suit and in the original petition filed before the land tribunal was one and the same. He has also further admitted that he was working

on daily wage basis and his daily wages were at Rs. 9.35 per day and he was employed in a company. These unequivocal admissions made by the

applicant in the original application were sufficient to prove the case of the revision petitioner who was the respondent in the original application

that the house was mortgaged and the mortgage was not redeemed as on the date the application was filed, that the original applicant could not be

considered as Kudikidappukaran, because his annual income exceeded Rs. 2,000.

7. As per the definition contained in Section 2(24) of the Kudikidappukaran

means a person who has neither a homestead nor any land exceeding in extent five cents in possession either as owner or as tenant, on which he could erect a homestead and (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 or the hut so permitted to be erected or occupied together with the easements attached thereto. Thus the right of Kudikidappukaran can be claimed only in respect of the land or hut and the homestead so permitted to be erected a person who has been in lawful possession of it or permitted to have the use and occupation of a portion of such land for the purpose of erecting a homestead. The house in question is not "homestead as defined in

Explanation I to Section 2(24) as it is not the case of the applicant in the original petition that he was permitted to construct the house in question

while he was permitted to have the use and occupation of the land for that purpose and he constructed the house. Therefore, it has to be seen

whether the house in question is a "hut". Explanation I defines the expression "hut" for the purpose of Clause (24) of Section 2 of the Act.

According to the said explanation, "hut" means any dwelling house constructed by a person other than the person permitted to occupy it at a cost

at the time of construction not exceeding Rs. 750 or it could have at the time of construction yielded a monthly rent not exceeding Rs. 750.

According to Explanation III, where any Kudikidappukaran secures any mortgage with possession of the land in which the Kudikidappu is situate,

his Kudikidappu right shall revive on the redemption of the mortgage, provided that he has at the time of redemption no other homestead or any

land exceeding five cents in possession either as owner or as tenant, on which he could erect a homestead. Explanation IV further provides, 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 five cents in

possession either as owner or as tenant, on which he could erect a homestead and (b) his annual income does not exceed Rs. 2,000. In this case, it

has already been pointed out that the house in question was mortgaged with possession to the applicant in the original petition, i.e., the 1st

respondent herein. The mortgage had not been redeemed either on the date the application was filed or on the date the Appellate Authority passed

the order. It is not the case of the first respondent that he had recovered the amount from the revision petition and the mortgage had been

redeemed. The preliminary decree for redemption passed by the District Munsif, Mahe, in O.S. No. 12 of 1982 has not been satisfied. Therefore,

even assuming that at the time of mortgage, the original applicant had already been let into the house as a tenant, subsequently, the house was

mortgaged and that mortgage had not been redeemed on the date the application was filed and also on the date the authorities below passed the

order, the application u/s 88-B for purchasing the land could not have been maintained and as such, it could not have been considered.

8. Even if it is considered that the leasehold right did not merge into the mortgage rights, as per the admission made by the original applicant, his

annual income exceeded Rs. 2,000 because he has admitted in his evidence that he was working in a mill and was being paid wage of Rs. 9.35 per

day, thereby his annual income exceeded Rs. 2,000. As such, he was not entitled to maintain the application as per Clause (b) of Explanation IV

even after redemption of the mortgage which had not taken place even on the date the Appellate Authority passed the order.

9. In addition, to this, there is a report of the Revenue Inspector, according to which the cost of the house at the time of construction was Rs.

1,120.60 and the same would have fetched a rent of Rs. 6 per month. This evidence has been brushed aside by both the authorities on the ground

that both of them have contended that the valuation had not been made correctly. According to the applicant, the cost has been exaggerated and

accordingly to the revision petitioner who is the respondent in the original application, the Revenue Inspector has shown the cost much less. In any

case, in the absence of any evidence imputing motive to the Revenue Inspector. I see no reason to reject the report of the Revenue Inspector. The

expressions "hut" and "dwelling house" appear to have been treated by the Act as meaning the same, because the definition of the expression "hut"

makes it clear that hut means a "dwelling house." As per Explanation II, which also applies to the house in question which is a dwelling house, if the

cost of construction of the dwelling house exceeded Rs. 750, it could not be claimed as Kudikidappu and as such, no right u/s 88-B could have

been claimed in respect of the dwelling house in question.

10. For the reasons stated, it is to be held that both the Authorities have acted illegally, ignored the material evidence on record and failed to

decide the material questions.

11. For all the reasons stated above, it is held that the original application is liable to be dismissed.

12. In the view I take; it is not necessary to refer to the several decisions cited by both the sides.

13. In view of the foregoing, this revision petition is allowed. The order dated 22nd August, 1986 passed by the Appellate Authority and the order

dated 7th January, 1985 passed by the land tribunal are set aside. The original application 1/82-K is dismissed. However, there will be no order as

to costs.