(2004) 02 KL CK 0005

In the High Court Of Kerala

Case No : C.R.P. No. 1562 of 2000

Sheik Abdul Salam and Others APPELLANT

Vs

Saibunnisa and Others RESPONDENT

Date of Decision : 13-02-2004

Acts Referred:
Kerala Land Reforms Act, 1963 — Section 2, 79, 80B

Citation : (2004) 02 KL CK 0005

Hon'ble Judges : A. Lekshmikutty, J

Bench : Single Bench

Advocate : T.M. Chandran, for the Appellant; P. Vijayabhanu and Mini John Paremalil, for the Respondent

Final Decision : Dismissed

Judgement

A. Lekshmikutty, J.—Against the Judgment in A.A. No. 47/1993 on the file of the Appellate Authority (LR), Thrissur, this appeal is filed by the Appellants. The said appeal is against the order in O.A. No. 32/1991 of the Land Tribunal, Thrissur. Petitioners and Respondents 9 and 10 are the legal heirs of Sheik Ammer Hussain Saheb, who was filed the application u/s 80(B) of the Kerala Land Reforms Act, for purchase of kudikidappu to an extent of 3 V3 cents in Sy. No. 1317 of Thrissur Village. The case of the applicant was that with permission of the landlady, he has constructed a homestead in the property. The owner of the property is the mother-in-law of the applicant. The applicant is in continuous occupation of the property since 1940 without any interruption and obstruction and he has no landed property to construct a building. So he is entitled to purchase his kudikidappu.

2. The Respondents filed objection denying the right of kudikidappu. The property in question was partitioned in O.S. No. 470/1974 on the file of the Munsiff Court, Thrissur. The wife of the original applicant is a co-sharer of the said property. The house bearing No. 25/496 claimed to be kudikidappu is not a hut and the costs of construction was Rs. 10,000 and the rent that would have

been fetched was Rs. 150 per month at the time of construction. The original applicant is not a kudikidappukaran. The application is liable to be dismissed.

3. The Revenue Inspector attached to the Land Tribunal filed a report which would reveal that the applicant and family members are residing in the hut for the last 50 years and it was constructed by the applicant spending his own money. Original building was totally destroyed in whirl-storm occurred in the year 1940.

4. The wife of the original applicant was examined as P.W. 1 and the witnesses were examined as R.Ws. 1 and 2, Exts. R-1 to R-5 were marked on the side of the Respondents. Exts. C-1 to C-3 were also marked. The Land Tribunal, after appreciation of the evidence, dismissed the application. Against which, the legal heirs of the original applicant filed A.A. No. 47/1993 before the Appellate Authority, Thrissur. The Appellate Authority dismissed the appeal, against which this revision petition is filed.

5. Heard learned Counsel on both sides and perused the records and the impugned Judgment. Admittedly me original applicant is the son-in-law of the landowner. Petitioners and Respondents 9 and 10, are the legal heirs of the original applicant Sheik Ammer Hussain Saheb. Exts. R-1 to R-5 produced by the Respondents would show that in respect of the property, a suit was filed by the legal heirs of the original owner for partition. P.W. 1, the wife of Sheik Ammer Hussain Saheb, a co-sharer of the property in which kudikidappu is sought for. The total extent of the property is only 3?, cents. The case of the original applicant is that with permission of the mother-in-law, landowner, he resided in the building after his marriage along with his wife. The existence of an old building in the property is admitted by the applicant. But according to him, the old building has been destroyed in whirl-storm and thereafter, the late applicant has constructed a building spending his own money. This is denied by the Respondents. On behalf of the applicant, his wife was examined as P.W. 1. Oral evidence of P.W. 1 also would show that there was a building in existence and they started their residence in the building after her marriage with Sheik Ammer Hussain Saheb. According to her, it was subsequently renovated by her husband spending his own money. This fact is denied by Respondents 1 to 8. Apart from the interested testimony of P.W. 1 there is no other evidence to substantiate the contention of the Petitioners. In the absence of any reliable evidence, it is to be found that the building in question belongs to the landowner. Then the next question to be considered is whether it would come under the definition of a hut. Section 2 Explanation II(a) of the Kerala Land Reforms Act defines "hut" as follows:

hut means any dwelling house constructed by a person other than the person permitted to occupy it:

(i) at a cost, at the time of construction, not exceeding seven hundred and fifty rupees; or (li) which could have at the time of construction, yielded a monthly rent not exceeding five rupees, and includes any such dwelling house reconstructed by the kudikidappukaran in accordance with the provisions of Section 79 of the Kerala Land Reforms Act.

In order to satisfy the definition of hut, the cost of construction of the building in question shall not exceed Rs. 750 or yielded a monthly rent less than Rs. 5. So the Petitioners herein has to prove either of these conditions. Exts. C-1 to C-3 are the report of the Revenue Inspector and Commissioners respectively. The Land Tribunal as well as the Appellate Authority did not accept Exts. C-1 and C-2. In Ext. C-1, the Revenue Inspector has stated that the costs of the building at the time of construction as Rs. 1,328. But the monthly rent at the time of construction is not shown in the report. So, the Land Tribunal as well as the Appellate Tribunal did not accept the report of the Revenue Inspector. Ext. C-2 is another report filed by an Advocate Commissioner. The report was also set aside by the Land Tribunal since there was no data shown in the report. Ext. C-3 is yet another Commissioner''s report filed by an Advocate Commissioner. He has assessed the value of the building as Rs. 1,303 and the monthly rent yielded at the time of construction was assessed as Rs. 20. Even though the applicant has stated that the value of the building at the time of construction is less than Rs. 150 and the monthly rent yielded would be 50 paise, no evidence has been adduced to substantiate the same. So with available evidence it cannot be found that the building in the property is a hut. If it is actually a hut, the Petitioners herein would have adduced some evidence to substantiate the same. It has come out in evidence that the wife of the applicant is one of the co-sharer of the property. Ext. R-1 is the Judgment in O.S. No. 470 of 1974 filed by co-owner for partition of 3?, cents. The parties are close relatives and the wife of the applicant is a sharer of the property. As per the applicant, his mother-in-law was allowed him to occupy the building in the property after his marriage with P.W. 1. So it could be on the basis of the relationship between the landowner and her daughter and son-in-law, they started their residence. That by itself will not create any right of kudikidappu. In such circumstances the courts below have rightly found that the Petitioners are not entitled to purchase kudikidappu right. There is no illegality, irregularity or impropriety in the order passed by the court below. Hence the Civil Revision Petition is dismissed.