
(1966) 02 KL CK 0021
In the High Court Of Kerala
Case No : S.A. 646 of 1962

Vasudevan and Others

APPELLANT

Vs

Sreemathy Amma

RESPONDENT

Date of Decision : 14-02-1966

Acts Referred:

Kerala Land Reforms Act, 1963 — Section 2(25)(i)

Citation : (1966) KLJ 623

Hon'ble Judges : T.C. Raghavan, J

Bench : Single Bench

Advocate : V. Balakrishna Eradi, for the Appellant; N. Sundara Iyer and V.R. Venkitakrishnan, for the Respondent

Final Decision : Dismissed

Judgement

T.C. Raghavan, J.—The claim in this second appeal by the defendants is that they are kudikidappukars, or in the alternative, they were ulkudi holders. Both these contentions have been rejected by the lower courts. "Kudikidappukaran" is defined u/s 2(25) of Act I of 1964; and the appellants might become kudikidappukars but for the fact that the lower courts have found that the appellants have joint right at least in a family house. If so, the appellants cannot be kudikidappukars. Mr. Balakrishna Eradi, the counsel of the appellants, seeks to argue that u/s 2(25)(i), a person who owns and possesses other land alone is disqualified to be a kudikidappukaran. I do not agree. If a person either owns land or possesses land as a tenant, he is disqualified to claim rights as a kudikidappukaran. Since the lower courts have concurrently found that the appellants are joint owners of at least the family house, they are not kudikidappukars.

2. The next contention is that they were ulkudi holders. Ulkudi holders are not given any right under Act 1 of 1964. It is true that under the Malabar Tenancy Amendment Acts of the fifties, ulkudi holders were given fixity of tenure. Now that there is no protection for them under Act I of 1964, even if the appellants

were ulkudi holders under the Malabar Tenancy Act, they cannot claim such right now. It is suggested by the counsel of the appellants that the fixity of tenure given to all holders of lands under the Malabar Tenancy Act is now protected under the land Reforms Act; and that therefore, it must be presumed that the ulkudi holders, right is also saved or retained by the Land Reforms Act. I do not think this contention is justified. Act I of 1964 repealed the Malabar Tenancy Act; and re-enacted all the provisions, in several cases in a wider form, and probably in a few cases in a restricted form. In such a case, unless the appellants show that their right as ulkudi holders is protected under the new legislation, they cannot request the court to presume that such rights are also protected. Therefore, this contention must also fail.

The last argument of Mr. Balakrishna Eradi is that the lower courts should have awarded compensation for improvements to the appellants, I think that the claim is justified. But, since there are no data available for fixing the value, I relegate the question regarding the quantum to the execution stage. A commission may be issued in execution; and the value fixed by him may be awarded.

With the small modification mentioned above regarding compensation, the second appeal is dismissed. No costs.