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## KUCHIYAN GOVINDA SWAMI

v.

### KALLIANI AMMA LEKSHMI AMMA AND ORS.

March 31, 1966

**B** [M. HIDAYATULLAH, J. R. MUDHOLKAR, R. S. BACHAWAT AND J. M. SHELAT, JJ.]

*Kerala Land Reforms Act, 1963 (Ker. 1 of 1964), ss. 2(28), 2(26) —“Kuzhikanam” and “Kudiyiruppu”, meaning.*

By a deed styled ‘otti Kuzhikanam deed’, the predecessor of the respondent sold a building standing on a property to the predecessor of the appellant and also transferred to him the right to possess and enjoy the property for 12 years in Kuzhikanam right with liberty to plant coconut trees thereon. The deed expressly reserved the right for the respondent to enjoy the fruit bearing trees then standing on the properties, and provided that after expiry of 12 years the appellant would on demand demolish and take away the building and surrender possession of the land on receipt of a certain amount and he agreed compensation for the coconut trees planted by him. The respondent instituted a suit for redemption of the property, which was decreed. On appeals, the decree was affirmed by the District Court

**C** and High Court. In appeal to this Court the appellant claimed fixity of tenure and protection from eviction on the ground that he was (i) a Kuzhikanamdar under s. 2(57)(d) and s. 2(28), or alternatively, (ii) the holder of a kudiyiruppu under s. 2(57)(h) and s. 2(26) of the Kerala Land Reforms Act.

**HELD:** (i) The deed did not grant Kuzhikanam rights to the appellant.

**E** “Kuzhikanam” as defined in s. 2(28) means a transfer (1) of garden lands or of other lands or of both, (2) with the fruit bearing trees, if any standing thereon at the time of the transfer, (3) for the enjoyment of those trees and (4) for the purpose of planting such fruit bearing trees thereon. It does not include a usufructuary mortgage as defined in the Transfer of Property Act, 1882 but it was not the case of the respondent that the deed created such a usufructuary mortgage. [137 E-F]

**F** A transfer of land without the fruit bearing trees then standing on it and not carrying with it the right to enjoy those trees was not a kuzhikanam as defined in s. 2(28). The force of the words “if any” in the definition of “kuzhikanam” in s. 2(28) is that if there are any fruit bearing trees on the land at the time of the transfer, the trees also must be transferred for their enjoyment by the transferee. [137 H—138 B]

(ii) The appellant was not the holder of Kudiyiruppu within the meaning of s. 2(26) of the Act.

**G** There was no material on the record to show that the building on the land was a residential building. Moreover, it did not appear that the land was necessary for the convenient enjoyment of the building. [138 D]

**CIVIL APPELLATE JURISDICTION:** Civil Appeal No. 225 of 1964.

**H** Appeal by special leave from the judgment and decree dated July 25, 1961 of the Kerala High Court in S.A. No. 852 of 1957.

*A. G. Pudissery*, for the appellant.

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*M. R. K. Pillai*, for the respondents.

The Judgment of the Court was delivered by

**Bachawat, J.** In 1921, the plaintiff executed in favour of the defendant an otti kuzhikanam deed in respect of the suit property. By this deed, the plaintiff sold to the defendant the building standing on the property for 350 fanams and also transferred to him for 350 fanams the right to possess and enjoy the property for 12 years in kuzhikanam right with liberty to plant coconut trees thereon, expressly reserving for the plaintiff the right to enjoy the fruit-bearing trees then standing on the property. The deed provided that after the expiry of 12 years the defendant would on demand demolish and take away the building and surrender possession of the land on receipt of 350 fanams and the agreed compensation for the coconut trees planted by him. The plaintiff instituted a suit for redemption of the property. During the pendency of the litigation, the plaintiff and the defendant died, and their legal representatives were substituted in their place. On May 31, 1951, the Principal District Munsif, Quilon decreed the suit. On appeal, the District Court of Quilon affirmed this decree. The present appellant, who is one of the legal representatives of the original defendant, filed a second appeal in the High Court of Kerala. During the pendency of this appeal, the Kerala Agrarian Relations Act, 1960 (Act IV of 1961) came into force. Before the High Court, the appellant claimed fixity of tenure and protection from eviction on the ground that he was a kuzhikanamdar or alternatively, the holder of a kudiyiruppu, and, therefore, a tenant within the meaning of s. 2(50) (i)(e) read with s. 2(22) and s. 2(50)(i)(j) read with s. 2(21) of Act IV of 1961. The High Court negatived this contention, and dismissed the appeal. The appellant now appeals to this Court by special leave. During the pendency of this appeal, Act IV of 1961 was repealed and the Kerala Land Reforms Act, 1963 (Act I of 1964) came into force. The appellant now claims fixity of tenure and protection from eviction on the ground that he is a kuzhikanamdar within the meaning of s. 2(57)(d) read with s. 2(28), or alternatively, the holder of a kudiyiruppu within the meaning of s. 2(57)(h) read with s. 2(26) of Act I of 1964. In the High Court, the appellant also claimed protection from eviction on the ground that he was a 'kudikidappukaran', but this contention was negatived by the High Court and is no longer pressed.

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Section 13 of Act I of 1964 gives to every tenant fixity of tenure in respect of his holding, and forbids resumption of the holding except as provided in ss. 14 to 22. Section 2(57) defines 'tenant'. By sections 2(57)(d) and (h), a tenant includes a kuzhikanamdar and the holder of a kudiyiruppu. The appellant does not contend that he is a tenant as defined in the main part of s. 2(57).

**A** He, however, contends that he is a tenant as defined in s. 2(57)(d) and s. 2(57)(h).

The deed of 1921 was styled 'otti kuzhikanam deed'. In Malabar, the word "otti" in the context of the deed designates a possessory mortgage. According to Wilson's Glossary of Judicial and Revenue Terms, "kurikanam" means "compensation allowed for the value of trees planted, or other improvements made by the tenant or mortgagee on relinquishing possession; a lease or mortgage on such conditions." Under a kuzhikanam mortgage or lease in Malabar, the grantee normally acquires the right to hold the property for 12 years for the purpose of planting fruit-bearing trees thereon and to claim compensation for the value of the trees planted on relinquishing possession. Had there been no special definition of the expression "kuzhikanam" in Act I of 1964, we would have been inclined to hold that the grantee under the deed of 1921 was a kuzhikanamdar. But s. 2(28) of Act I of 1964 provides that in this Act unless the context otherwise requires, "kuzhikanam" means and includes a transfer of garden lands or of other lands or of both, with the fruit-bearing trees, if any, standing thereon at the time of the transfer, for the enjoyment of those trees and for the purpose of planting such fruit-bearing trees thereon but shall not include a usufructuary mortgage as defined in the Transfer of Property Act, 1882." This definition of kuzhikanam is both inclusive and exhaustive. Unless the context requires otherwise, the expression "kuzhikanam" in the Act can have only the meaning given in s. 2(28). There is nothing in the context of s. 2(57) and s. 13, which requires a different meaning for this expression. "Kuzhikanam" as defined in s. 2(28) means a transfer (1) of garden lands or of other lands or of both, (2) with the fruit-bearing trees, if any, standing thereon at the time of the transfer, (3) for the enjoyment of those trees and (4) for the purpose of planting such fruit-bearing trees thereon. It does not include a usufructuary mortgage as defined in the Transfer of Property Act, 1882, but it is not the case of the plaintiff that the deed of 1921 created such a usufructuary mortgage. Now the deed of 1921, while effecting a transfer of land for the purpose of planting coconut trees thereon, expressly reserved for the grantor the right to enjoy the fruit-bearing trees then standing on the land and did not transfer those trees to the grantee. On behalf of the appellant, it was argued that the words "with the fruit-bearing trees, if any, standing thereon at the time of the transfer, for the enjoyment of those trees" are not essential parts of the definition of 'kuzhikanam' in s. 2(28), and that we should hold that a transfer of land for the purpose of planting fruit-bearing trees thereon is kuzhikanam, though there is no transfer of the fruit-bearing trees standing on the land at the time of the transfer and though the transfer is not for the enjoyment of those trees. We are unable to accept this contention. We think that a transfer of land without the fruit-bearing trees then standing on it and not carrying with it the right to enjoy those trees is not a

kuzhikanam as defined in s. 2(28). The force of the words "if any" in the definition is that if there are any fruit-bearing trees on the land at the time of the transfer, the trees also must be transferred for their enjoyment by the transferee. The contention that the deed of 1921 granted kuzhikanam rights as defined in s. 2(28) of Act I of 1964 is rejected. A

The appellant next contends that he is the holder of kudiyiruppu. Section 2(26) of Act I of 1964 which defines 'kudiyiruppu', reads: B

"kudiyiruppu" means a holding or part of a holding consisting of the site of any residential building, the site or sites of other buildings appurtenant thereto, such other lands as are necessary for the convenient enjoyment of such residential building and easements attached thereto, but does not include a kudikidappu." C

There is no material on the record to show that the building on the land is a residential building. Moreover, it does not appear that the land is necessary for the convenient enjoyment of the building. The contention that the appellant is the holder of kudiyiruppu is rejected. D

The appeal fails and is dismissed. There will be no order as to costs.

*Appeal dismissed.*