

# **Palayi Kizhakkekara Mathaiy'S Sonk.M. ... vs Pothiyill Mommatty'S Son Hamsa Haji & ... on 29 April, 1987**

**Equivalent citations: 1987 AIR 1326, 1987 SCR (3) 109, 1987 (3) SCC 326, (1987) 3 SCJ 241, AIR 1987 SUPREME COURT 1326, (1987) 1 CURCC 1097, (1987) 1 SUPREME 568, 1987 UJ(SC) 2 279, AIRONLINE 1987 SC 472**

**Author: V. Balakrishna Eradi**

**Bench: V. Balakrishna Eradi, A.P. Sen**

PETITIONER:

PALAYI KIZHAKKEKARA MATHAIY'S SONK.M. MATHEW & ANR.

Vs.

RESPONDENT:

POTHIYILL MOMMUTTY'S SON HAMSA HAJI & ORS.

DATE OF JUDGMENT 29/04/1987

BENCH:

ERADI, V. BALAKRISHNA (J)

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ERADI, V. BALAKRISHNA (J)

SEN, A.P. (J)

CITATION:

1987 AIR 1326                      1987 SCR (3) 109

1987 SCC (3) 326                JT 1987 (2) 520

1987 SCALE (1)1245

CITATOR INFO :

D                      1988 SC 587 (16,17)

ACT:

Kerala Land Reforms Act, 1963--Section 7D--Persons whose occupation of private forests or unsurveyed lands has a lawful origin-Entitled to protection--Persons in unlawful occupation based on trespass or forcible and unlawful entry--Not entitled to protection.

HEADNOTE:

Section 7D of the Kerala Land Reforms Act, 1963--Act 1 of 1964--as amended by Act 35 of 1969 provides that a person occupying private forests or unsurveyed lands shall be deemed to be a tenant if he or his predecessor-in-interest

was continuously in occupation of such land for not less than two years within a period of 12 years immediately precedings the 11th day of April, 1969.

In the instant case, the High Court while interpreting s. 7D took the view that the benefit of s. 7D would apply only to persons whose occupation of the private forests or unsurveyed lands had a lawful origin and not to persons in unlawful occupation based on trespass or forcible and unlawful entry.

In the appeal to this Court also the sole question concerning the interpretation of s. 7D was raised.

Dismissing the appeal and the special leave petitions,

HELD: 1. On a careful scrutiny of the provisions contained in ss. 7A to 7C and ss. 8 and 9 of the Act it is clear that the intention of the legislature was to grant protection only to persons whose possession had a lawful origin in the sense that they had either bona fide believed the lands to be Government's lands of which they could later seek assignment or had taken the lands on lease from persons whom they bona fide believed to be competent to grant such leases or had come into possession with the intention of attorning to the lawful owners or on the basis of arrangements like varam etc. which were only in the nature of licences and fell short of a leasehold right. It was not within the contemplation of the legislature to confer the benefit of protection on persons

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who had wilfully trespassed upon lands belonging to others and whose occupation was unlawful in its origin. [114A-C]

2. -The expression "in occupation" occurring in s. 7D must be construed as meaning 'in lawful occupation'. [114C]

3. In the present case, the finding of fact entered by the High Court is that the appellant had come into possession of the lands by trespass. His plea before the Courts below was that he was himself the owner of the area having acquired title to it by adverse possession. In such circumstances the High Court was fully justified in holding that the appellant was not entitled to the protection ors. 7D. [114D]

[In view of the offer made by the respondents that they are prepared to pay to the appellant a sum of Rs.50,000 as ex-gratia payment in full and final settlement of his claim, the Court directed that an amount of Rs.50,000 shall be deposited by the respondents in trial Court within three months with liberty to appellant to withdraw the same without furnishing any security. [114E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 165 of 1974 etc. From the Judgment and Decree dated 22.10.1973 of the Kerala High Court in S.A. No. 580 of 1970. T.S. Krishnamoorthy Iyer and N. Sudhakaran for the Appellants.

P.S. Poti, S.B. Saharya and Ms. Ratna Nair for the Respondents.

The Judgment of the Court was delivered by BALAKRISHNA ERADI, J. After hearing Counsel appearing on both sides we do not find any merit in this appeal and the Special Leave Petitions.

The sole question raised before us in the appeal concerns the interpretation of Section 7D of the Kerala Land Reforms Act, 1963-Act 1 of 1964--as amended by Act, 35 of 1969. That section reads--

"7D. Certain persons occupying private forests or unsur-

veyed lands to be deemed tenants--Notwithstanding anything to the contrary contained in section 52 or any other provision of the Transfer of Property Act, 1882, or any other law, or in any contract, custom or usage, or in any judgment, decree or order of court, any person in occupation at the commencement of the Kerala Land Reforms (Amendment) Act, 1969, of the land of another situate in Malabar to which the provisions of the Madras Preservation or Private Forests Act, 1949 (XXVII of 1949), were applicable on the 11th day of April, 1955 or which was unsurveyed on that date, shall be deemed to be a tenant if he or his predecessor-in-interest was continuously in occupation of such land for not less than two years within a period of twelve years immediately preceding the 11th day of April, 1967."

The High Court has taken the view that the benefit of the above section would apply only to persons whose occupation of the private forests or unsurveyed lands had a lawful origin and not to persons in unlawful occupation based on trespass or forcible and unlawful entry. We are of opinion that the said interpretation placed by the High Court on the section is perfectly correct.

For a proper understanding of the scope and intendment of Section 7D, it is necessary to examine the setting and the context in which the said section occurs in the Act. This will require a conjoint study of the provisions contained in Section 7A to 7C and Sections 8 and 9 of the Act which immediately precede and succeed Section 7D. Those sections are in the following terms:-

"7A. Certain persons occupying land for not less than ten years to be deemed tenants--notwithstanding anything to the contrary contained in section 52 or any other provision of the Transfer of Property Act, 1882, or any other law, or in any contract, custom or usage, or in any judgment, decree or order of court, a person shall be deemed to be a tenant in respect of the land of another in his occupation if-

(a) he or his predecessor-in-interest occupied such land believing it to be the property of the Government;

(b) subsequent to such occupation such land has become the property of such other person as a consequence of any judgment, decree or order of any civil court, and

(c) such land has been in the continuous occupation of such person for a period of not less than ten years preceding the commencement of the Kerala Land Reforms (Amendment) Act, 1969.

Explanation I--In computing the period of occupation of a person for the purpose of clause (c), the period during which the predecessor-in-interest or predecessors in-interest of such person was or were in occupation shall also be taken into account. Explanation II--For the purpose of this section, a person shall be deemed to be in continuous occupation notwithstanding any order of court for delivery of possession to another person or any court record of dispossession.

7B. Certain persons occupying lands under leases granted by incompetent persons to be deemed tenants--(1) Notwithstanding anything to the contrary contained in any law, or in any contract, custom or usage, or in any judgment decree or order of court, any person in occupation of the land of another at the commencement of the Kerala Land Reforms (Amendment) Act, 1969, on the basis of a registered deed purporting to be a lease deed, shall be deemed to be a tenant if he or his predecessor-in-interest was in occupation of such land on the 11th day of April, 1957, on the basis of that deed, notwithstanding the fact that the lease was granted by a person who had no right over the land or who was not competent to lease the land.

(2) Notwithstanding anything to the contrary contained in any law, or in any contract, custom or usage, or in any judgment, decree or order of court, any person who on the 11th day of April, 1957, was in occupation of the land of another and continued to be in occupation of such land till the commencement of the Kerala Land Reforms (Amendment) Act, 1969, shall be deemed to be a tenant if the court has delivered a judgment or passed an order before the date of publication of the Kerala Land Reforms (Amendment) Bill, 1968, in the Gazette that the occupation by such person was on the basis of an oral permission or an unregistered deed purporting to be a lease deed granted by a person who had no right over the land or who was not competent to lease the land.

7C. Certain persons who have paid amounts for occupation of land shall be deemed to be tenants:- Notwithstanding anything to the contrary contained in any law, or in any contract, custom or usage, or in any judgment, decree or order of court, any person who is in occupation of the land of another at the commencement of the Kerala Land Reforms (Amendment) Act, 1969, shall be deemed to be a tenant if he or his predecessor-in-interest has paid within a period of ten years immediately preceding such commencement any amount in consideration of such occupation or for the use and occupation of such land and has obtained a receipt for such payment from any person entitled to lease that land or his authorised agent or a receiver appointed by a court describing the payment as modavaram or nashtavaram or modanashtavaram or a receipt described as M.R. receipt.

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8. Certain persons who were cultivating land on varam arrangement to be deemed tenants--Notwithstanding anything to the contrary contained in any law or in any contract, custom or usage, or in any judgment, decree or order of court, any person who, by virtue of the provisions of section 6 of the Kerala Stay of Eviction Proceedings Act, 1957, was entitled to cultivate any nilam after the 11th day of April, 1957, and was cultivating the nilam at the commencement of this Act, shall be deemed to be a tenant, notwithstanding the expiry of the term fixed under the varam arrangement.

9. Certain persons who surrendered leasehold rights but continued in possession to be deemed tenants--Notwithstanding anything to the contrary contained in any law, or in any contract, custom or Usage, or in any judgment, decree or order of court, where, on or after the 11th day of April, 1957, a tenant holding land less in extent than the ceiling area, had executed a deed surrendering his leasehold right to the landlord, but had not actually transferred possession of the land to the landlord before the commencement of this Act, such deed shall be deemed to be invalid and such person shall be deemed to be a tenant."

On a careful scrutiny of the aforesaid provisions, it becomes abundantly clear that the intention of the legislature was to grant protection only to persons whose possession had a lawful origin in the sense that they had either bona fide believed the lands to be Government's lands of which they could later seek assignment or had taken the lands on lease from persons whom they bona fide believed to be competent to grant such leases or had come into possession with the intention of attorning to the lawful owners or on the basis of arrangements like varam etc. which were only in the nature of licences and fell short of a leasehold right. It was not within the contemplation of the legislature to confer the benefit of protection on persons who had wilfully trespassed upon lands belonging to others and whose occupation was unlawful in its origin. The expression "in occupation" occurring in Section 7D must be construed as meaning "in lawful occupation."

In the present case the finding of fact entered by the High Court is that the appellant had come into possession of the lands by trespass. His plea before the Courts below was that he was himself the owner of the area having acquired title to it by adverse possession. In such circumstances the High Court was in our opinion fully justified in holding that the appellant was not entitled to the protection of Section 7D. The appeal, is, therefore, devoid of merits. Shri P.S. Potti, learned Senior Counsel appearing on behalf of the respondents has very fairly submitted before us that his clients-respondents-are prepared to pay to the appellant a sum of Rs.50,000 as ex-gratia payment in full and final settlement of whatever claims the appellant may have towards the value of the rubber trees standing in plots. A, B and C or in any other respect. We record this submission and direct that an amount of Rs.50,000 shall be deposited by the respondents in the trial Court within a period of three months from today, whereupon the appellant will be at liberty to withdraw the said amount from Court without furnishing any security.

Subject to the aforesaid observation and direction, the appeal and the Special Leave Petitions. are dismissed. The parties will bear their respective costs. The amounts deposited in the trial court by the Receiver may be withdrawn by the respondents herein.

A.P.J.  
dismissed.

Appeal & Petitions

