

# SUPREME COURT OF INDIA

Kesavan Chellappan

Vs.

C.V. Sugathan

C.A.No.3856 of 2003

(Shivaraj V. Patil and B. N. Srikrishna JJ.)

22.09.2004

## JUDGMENT

**Shivaraj V. Patil, J.**

1. Heard learned counsel for the appellant.
2. Despite service of notice, the respondents are neither present, nor represented.
3. In the Suit O.S. No. 185/1978 filed by the respondent, the appellant was held to be a tenant rejecting his contention that he was a kudikidappukaran. The decree passed in the said suit attained finality as the appeal filed by the appellant against the said decree was dismissed. The appellant had filed O.A. No. 308/78 under Section 80-B of Kerala Land Reforms Act, 1963 claiming that he was kudikidappukaran and was entitled to get the rights under the Act. The application was allowed. The respondent filed appeal before the Land Reforms Appellate Authority and the same was allowed and the case was remanded to the Land Tribunal. The Land Tribunal again allowed the application of the appellant for the second time on 12.3.1985. The respondent filed appeal before the appellate authority challenging the said order of the Land Tribunal. The appellate authority allowed the appeal on 8.7.1987 and dismissed the original application filed by the appellant on the ground that the claim of the appellant was barred on principle of res-judicata by virtue of the decree passed by the civil court in O.S. No. 185/78. The appellant filed Civil Revision Petition before the High Court challenging the order of the appellate authority. The same was disposed of by the impugned judgment dismissing it.
4. The only question that arises for consideration in this appeal is whether the decree passed by the civil court without referring the question whether the appellant was a tenant or kudikidappukaran was effective and whether that could bar the remedy of the appellant on the principle of res-judicata. The Division Bench of the High Court, as can be seen from the impugned judgment, followed decision of another Division Bench in *Kunjan vs. Janaki*<sup>1</sup> taking a view that the question of referring issue of tenancy under Section 125(3) is confined only to a suit and not an appeal. The High Court also observed that the case of Kunjan aforementioned has been holding the field for a long time and several cases were disposed of

following the said judgment; it was not appropriate to disturb the law laid down in Kunjan's case. The High Court also took the view that the final decision of the civil court in A.S. No. 62/80 challenging the decree passed by the trial court in O.S. No. 185/78 had become final and in the absence of any challenge to it, the decree is binding; such a decree could not be treated as a nullity. The High Court, in our view, was right in dismissing the revision petition filed by the appellant by the impugned order. We have no good reason to interfere with the impugned judgment. Hence, the appeal is dismissed. No costs.

<sup>1</sup>[1980 K.L.T 796]