

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 3RD DAY OF NOVEMBER 2015/12TH KARTHIKA, 1937

RSA.No. 992 of 2003

**AS 65/2000 OF SUB COURT, THALASSERY DATED 27-01-2003
OS 222/1995 OF MUNSIFF COURT, THALASSERY DATED 28-06-2000**

APPELLANT(S)/APPELLANT/DEFENDANT:

**M.V.RAMESHAN, S/O.KUMARAN,
AGED 36, DOCUMENT WRITER, KUMARALAYAM,
P.O.MUNDALORE, KANNUR.**

**BY ADVS.SRI.P.V.SURENDRANATH
SMT.BINDUMOL JOSEPH**

RESPONDENT(S)/RESPONDENT/PLAINTIFF:

**PERALASSERY TEMPLE,
PERALASSERY P.O., MUNDALORE,
REPRESENTED BY ITS MANAGER,
K.P.MANOCHARAN, S/O.M.CHANDUKUTTY, AGED 45,
MALORERI AMSOM, KANNUR DISTRICT.**

**BY ADVS. SRI.B.KRISHNAN
SRI.R.PARTHASARATHY**

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON
03-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

PJ

P.B.SURESH KUMAR, J.

R.S.A.No.992 of 2003

Dated 3rd November, 2015.

J U D G M E N T

The defendant in a suit for injunction is the appellant. The plaintiff is a temple. The case of the plaintiff is that the defendant who has nothing to do with the property of the temple is attempting to erect some structures in a portion of the temple property. The portion of the temple property where the defendant attempted to erect structures is described in the plaint schedule. The defendant contested the suit contending that the plaint schedule property was the subject matter of a lease; that the lessee of the temple has erected permanent structures in the temple property and that he has obtained the right of the lessee by virtue of a document executed in the year 1992. According to him, since his predecessors have erected structures in the property, he is entitled to protection of Section 106 of the Kerala Land Reforms

Act. It is seen that the trial court referred the issue relating to the protection claimed by the defendant under Section 106 of the Kerala Land Reforms Act to the Land Tribunal and the Land Tribunal decided the said issue against the defendant. The trial court accepted the decision of the Land Tribunal and decreed the suit. The defendant challenged the decision of the trial court in appeal. The appellate court, on a reappraisal of the evidence on record, confirmed the decision of the trial court. Aggrieved by the concurrent decisions against him, the defendant has come up in this second appeal.

2. Heard the learned counsel for the appellant as also the learned counsel for the respondent.

3. The learned counsel for the appellant contended that he has not been given an effective opportunity to establish his case that he is entitled to the protection of Section 106 of the Kerala Land Reforms Act, either by the Land Tribunal or by the trial court. Relying on the additional documents produced by the appellant in the appeal as Annexures 1 to 3, the learned counsel contended that he has made out a case for protection

of the provision contained in Section 106 of the Kerala Land Reforms Act.

4. Section 106(1) of the Kerala Land Reforms Act reads thus :

106. Special provisions relating to leases for commercial or industrial purposes-- (1) Notwithstanding anything contained in this Act, or in any other law, or in any contract, or in any order or decree of Court, where on any land leased for commercial or industrial purpose, the lessee has constructed buildings for such commercial or industrial purpose before the 20th May, 1967, he shall not be liable to be evicted from such land, but shall be liable to pay rent under the contract of tenancy, and such rent shall be liable to be varied every twelve years.

x x x x x x x

x x x x x x

In order to claim the protection of Section 106 of the Kerala Land Reforms Act, one has to establish that the land in question has been leased for commercial or industrial purpose and the lessee has constructed buildings for such commercial or industrial purpose before 20.5.1967. A perusal of the impugned

decisions indicate that despite various opportunities granted to the appellant, he has not adduced any evidence in support of his claim that he is entitled to the protection under Section 106 of the Kerala Land Reforms Act. The additional documents produced by the appellant in this second appeal also do not indicate that the appellant or his predecessors have erected any structure in the suit property before 20.5.1967. In the said view of the matter, I do not find any reason to interfere with the impugned decisions of the courts below. There is no question of law, much less any substantial question of law, involved in this matter. The second appeal, in the circumstances, is devoid of merits and the same is accordingly dismissed in limine.

All the interlocutory applications in the appeal are closed.

Sd/-

P.B.SURESH KUMAR, JUDGE.

tgs

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