

(1974) 01 KL CK 0007
In the High Court Of Kerala
Case No : A.S.A. No. 10 of 1971

Raman Pillai Parameswaran Pillai

APPELLANT

Vs

Venkiteswara Prabhu and Others

RESPONDENT

Date of Decision : 17-01-1974

Acts Referred:

Kerala Land Reforms Act, 1963 — Section 106

Citation : (1974) KLJ 75

Hon'ble Judges : V.P. Gopalan Nambiyar, J;K. Bhaskaran, J

Bench : Division Bench

Advocate : S. Boothalinga Iyer, for the Appellant; S. Narayanan Poti, for the Respondent

Final Decision : Dismissed

Judgement

V.P. Gopalan Nambiyar, J.—This is an appeal with a certificate of leave to appeal granted by a learned judge of this Court, against the decision in S.A. 328 of 1966. The suit was one for eviction with arrears of rent. The document of tenancy was evidenced by Ext. P1, executed by the 1st defendant. The lease was for industrial and commercial purpose, within the meaning of S. 106 of the Kerala Land Reforms Act. The appellant, the 2nd defendant in the suit, was a sub-lessee of the property, under the 1st defendant. The trial court and the lower appellate court concurred in granting a decree for eviction. In Second Appeal, the learned judge of this Court affirmed the decree and also negated the contention that the 2nd defendant was entitled to protection under S. 106 of the Land Reforms Act 1 of 1964. The only contention urged in this appeal before us is that although the 2nd defendant was only a sub-lessee, he was nevertheless entitled to be protected under S. 106 of the Act. S. 106 in so far as it is material, reads as follows:

106. Special provisions relating to leases for commercial or Industrial purposes:
(i) 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.

Explanation: For the purposes of this section,

(a) "lessee" includes a legal representative or an assignee of the lessee; and

(b) "building" means a permanent or a temporary building and includes a shed.

The body of the Section confers protection on "lessee" and the explanation by an inclusive definition provides that the term "lessee" will cover a legal representative or an assignee of the lessee. On the language of the Section, therefore, a sub-lessee is outside the purview of the Section. That was what was expressly ruled by a Division Bench of this Court in *Mammoo and Another Vs. Asya and Others*, , where it was pointed out that having regard to the expression used in the closing part of Clause (I) to S. 106, that the lessee shall be liable to pay rent under the contract of tenancy, the reasonable view to take was that only a tenant between whom and the landlord, a privity of contract exists would be within the scope of the Section. It was pointed out that the sub-lessee would therefore be outside its ambit. It was after this decision that the Section was amended, and the Explanation after clause (1) was added. But even that does not go the whole hog to confer benefit on a sub-lessee. We are therefore unable to hold that the appellant in this case is entitled to benefits of S. 106 of the Act.

2. The decision of the learned judge was right. We dismiss this appeal with costs.