

KERALA HIGH COURT

Narayanan

Vs

Kunchi Amma Parukutty Amma

(Manoharan, J.)

22.12.1986

JUDGEMENT

Manoharan, J.

(1.) THIS revision petition arises out of an execution petition filed by the decree-holder in O. S. No. 541 of 1975 on the file of the principal Munsiff 's Court, Parur.

(2.) THE defendant judgment debtor is the revision petitioner. THE plaintiff who is the respondent herein filed the above suit for eviction of the defendant after removing the shop-building therein and for recovery of arrears of rent. It appears that when the suit was filed, the defendant filed O. A. No. 120 of 1974 before the Parur Land Tribunal for purchase of kudikidappu right in respect of the same property alleging that he is a kudikidappukaran. The Land Tribunal rejected the petition on 30-11-1974 holding that the petitioner was not a kudikidappukaran and against that, the defendant filed L. R A. S. No. 523 of 1975 before the Appellate Authority (Land Reforms), ernakulam. That was also dismissed on 7-10-1976. Thereafter the petitioner herein filed O. S. No. 181 of 1974 for injunction restraining the respondent herein from obstructing him from thatching and maintaining the building. That suit was also dismissed. In O. S. No. 541 of 1975 the petitioner herein filed a written statement contending that he is a kudikidappukaran. The Munsiff 's court referred the matter to the Land Tribunal under S. 125 (3) of the Kerala land Reforms Act which is referred to hereinafter as 'the Act' for short. It was held by the Land Tribunal that the petitioner is not a kudikidappukaran and is only a rentee. Just after the evidence was closed and before the disposal of the suit, the petitioner filed an additional written statement claiming benefit under S. 106 of the Act and contending that he was not liable to be evicted. The learned Munsiff considered his claim under S. 106 of the Act also and passed a decree for eviction of the petitioner hereinafter removing the shop-building and for recovery of rent, overruling his claim under S. 106 of the Act. Aggrieved by the judgment and decree of the learned Munsiff, the petitioner herein filed A. S. No. 120 of 1977 before the Additional District Court, Parur. In the appeal, the main contention raised by the petitioner herein was that he was entitled to the benefit of S. 106 of the Act. The appeal was dismissed and the judgment and decree of the trial court was confirmed. The petitioner filed s. A. No. 812 of 1978 against the judgments and decrees of the lower courts before this Court and here also the main contention raised was that he was entitled to the protection under S. 106 of the Act. This Court overruled his contention and dismissed the second appeal and granted time till 31-3-

1980 to the petitioner to surrender the building to the respondent herein. We are told by the Counsel for the petitioner that a Special Leave Petition was filed by him before the Supreme Court and the matter is now pending in the Supreme court.

(3.) THE respondent herein filed E. P. No. 187 of 1978 for execution of the decree. THE petitioner herein filed a counter affidavit contending that the decree passed in O. S. No. 541 of 1975 was without jurisdiction for want of reference to the Land Tribunal under S. 125 of the Act on the question of his claim under S. 106 of the Act and therefore the E. P. was not maintainable. THE executing court rejected his objection and ordered delivery of the building by order dated 17th April, 1980. Aggrieved by the said order the petitioner preferred this Civil Revision Petition. After hearing the arguments on both sides, a learned single judge referred the revision petition to be heard by a Division Bench, on the ground that the question whether the claim under S. 106 of the Act required reference to the Land Tribunal under S. 125 of the Act was pending before a division Bench and if the question was answered in the affirmative, the further question whether the decree was a nullity would arise and it was also an important one. ;