

IN THE COURT OF II ADDITIONAL SUB JUDGE, KOZHIKODE**Present:- Smt. Vandana R., II Addl Sub Judge.**Thursday, the 27th day of November, 2025.**Original Suit No. 104/2023****Between:**

M.Sobhana, Aged 70 years, D/o.Ammukutty
 Amma, Karthika house, Head post office,
 St.Vincent colony road, Kasaba amsom,
 Kalathinkunnu desom, Kozhikode Taluk - 673001

Plaintiff

And:

- 1 M.Rajendran, Aged 78 years, S/o.Ammukutty
 Amma, Mele chamundi paramb, Civil station PO,
 Nedungottur amsom desom, Kozhikode Taluk -
 673020
- 2 M.Saseendran, Aged 74 years, S/o.Ammukutty
 Amma, Pournami house, Head post office,
 St.Vincent colony road, Kasaba amsom,
 Kalathinkunnu desom, Kozhikode Taluk - 673001
- 3 M.Beena, Aged 58 years, D/o.Ammukutty Amma,
 Kelanmarkandy house, Korangadu PO, Raroth
 amsom desom, Thamarassery Taluk, Kozhikode
 District - 673574
- 4 Surjith, Aged 28 years, S/o.M.Sudeendran,
 Vaishnavam house, Kodassery paramb,
 Chevarambalam PO, Chevayur amsom desom,
 Kozhikode Taluk - 673017
- 5 Shylaja M, Aged 60 years,
 W/o.Late.M.Jayendran, Dwaraka, Moodayil,
 Nariparamb PO, Thavanoor via, Kalady Village,
 Ponnani Taluk, Malappuram District - 679573
- 6 Soumya Pradeep, Aged 39 years,
 D/o.M.Jayendran, Flat No.102, Sree residency
 Boodevi nagar colony, Near 7 temple,
 Lothukunda Alwal, Sikkendarabad district,
 Thelunkana - 500015

Defendants

This suit coming on 12th day of November 2025 for final hearing before me in the presence of Sri.Simon Chacko and P.R.Sheeja Advocates for Plaintiff and Sri.P.A.Sajeed and Sri.Ameerali V.K Advocates for D1, Sri.Vinod S Nair Advocate for D2, Sri.V.A.Anirudh and Sri.P.N.Sreenivasan Advocate for D3, Sri.Anees M.K Advocate for D4, Sri.V.Sreenath and Smt.Bindu G Advocates for D5 and D6 and having stood over to this day for consideration, the court delivered the following:

J U D G M E N T

Suit is one for partition.

2. Plaint averments, in brief, is as follows: Property described in item Nos. 1, 2 and 3 of the plaint B schedule belonged to Surendran as per document Nos. 142/1996, 143/1996 and 144/1996 of SRO, Kozhikode respectively. As Surendran was mentally ill, the documents mentioned above was signed by Sudeendran as his guardian. Sudeendran died on 25.10.2000. Thereafter, the first defendant had filed a petition before the Hon'ble District Court, Kozhikode as OP 19/2012 to appoint him as the guardian of Surendran. The Hon'ble District Court, by its order dated 17.11.2012, had appointed the defendant No. 1 as the guardian of Surendran. While so Surendran died on 14.12.2013 without wife or children. After the death of Surendran, his right over the property vested with his mother Ammukutty Amma. Ammukutty Amma died on 23.05.2016. Balakrishnan Nair, the husband of Ammukutty Amma had predeceased her and thus assets of Surendran in the hands of Ammukutty Amma, subsequent to her death devolved upon the

plaintiff, defendants No. 1 to 3, Jayendran and defendant No. 4, (son of pre-deceased son of Ammukutty Amma, Sudeendran). While so Jayendran died on 21.02.2023 and his right over the property devolved upon his wife and daughter who are defendants No. 5 and 6. Accordingly, now plaintiff schedule property are jointly owned and possessed by the plaintiff and defendants.

3. Plaintiff is entitled to 2 out of 12 shares. Defendants No. 1, 2, 3 and 4 are entitled to 2 shares each and defendants No. 5 and 6 are jointly entitled to two such share. Now, the plaintiff is not willing to keep the property in joint possession and ownership. On 05.04.2022 the plaintiff had also caused to issue a lawyer notice calling upon the defendants to effect partition of the plaintiff schedule property. Defendant No. 1 has sent a reply on 22.04.2022 stating that the wife and children of Sudeendran will not acquire any right over the plaintiff schedule property and that he is ready to effect the partition of the property excluding them. Hence, the suit.

4. Defendant No. 1 entered appearance and filed written statement contending that he was appointed as the guardian of deceased Surendran as per the order of Hon'ble District Court, Kozhikode in OP 19 / 2012. Defendant further contends that he had incurred an expense of ₹ 1,76,842/- for looking after Surendran. In this regard, vouchers for ₹ 1,61,798/- was accepted by the Hon'ble District Court and the defendant is entitled to recover the amount from the property as a debt of Surendran. It is with such charge that Ammukutty Amma had acquired right over the property after the death of Surendran. Only after clearing the debt,

heirs can divide the property among themselves. Though Ammukutty Amma had promised to clear the debt, she has not done the same and it remains as it is. Therefore, before effecting the partition of the property, the defendant is entitled to receive the above amount from the property along with 12% interest. Defendant further contends that after the death of Surendran, his entire right over the property vested with Ammukutty Amma. Before the death of Ammukutty Amma, Balakrishna Nair husband had expired. So after the death of Ammukutty Amma, her right over the property devolved upon the plaintiff, defendants No. 1 to 3 and Jayendran. Defendant further contends that the father of defendant No. 4, Sudeendran had expired before the death of Ammukutty Amma. Therefore, at the time of death of Ammukutty Amma, the defendant No. 4 will not have any right in the property as per Section 15 (c) of Hindu Succession Act. So, after the death of Ammukutty Amma, plaintiff schedule property has to be divided into 5 shares. The 5th and 6th defendant as the heir of deceased Jayendran will have 1/5th right in the plaintiff B schedule property. But the defendant has learned that apart from defendant No. 5, Jayendran was married to another woman named Jayalatha Parakkal and in the obituary published in the Mathrubhumi Newspaper, Jayalatha Parakkal was shown as the wife of Jayendran. If that is the case, the question as to who should inherit the right of the deceased Jayendran has to be determined by this Court. The defendant further disputes the contention of the plaintiff and other defendants that defendant No. 4 is entitled to share in the property. The defendant contends that the property vested in Ammukutty Amma as the heir of Surendran will vest only in the heirs of

Surendran after her death. Therefore since Sudheendran died before Ammukutty Amma, the defendant No. 4 will not acquire any right in the property. The defendant further contends that Ammukutty Amma is not having a son named Janardhanan. Moreover, the value of the property shown in the plaint is high.

5. Defendants No. 2 and 3 entered appearance and filed separate written statement conceding the plaint claim. Defendants further state that the property is to be partitioned into 12 equal shares and that defendant is entitled to 2 such share.

6. Defendant No. 4 entered appearance and filed written statement conceding the plaint claim and agreeing to effect partition of the plaint schedule property. The defendant also denies the contention of defendant No. 1 that defendant No. 4 is not entitled for any share in the plaint schedule property as the father of defendant No. 4, Sudeendran died prior to the death of Ammukutty Amma.

7. Defendants No. 5 and 6 also entered appearance and filed joint written statement conceding the plaint claim and agreeing to effect partition of the plaint schedule property.

8. On the basis of the above pleadings, the following issues were raised for trial:

- (1) Whether defendant No. 1 is having any charge over plaint B schedule property ?
- (2) Whether plaint B schedule property is partible ?
- (3) If so, what are the shares to which each parties are entitled to?
- (4) Relief and cost ?

9. Evidence on the side of the plaintiff consists of oral testimony of PW1. Exhibit A1 to Exhibit A10 were marked. Defendants did not adduce any oral evidence. Exhibits B1 and B2 were marked.

10. **Issues Nos. 1 to 3:-** Suit for partition. The following are the admitted facts between the parties. Plaintiff B schedule property belongs to deceased Surendran as per Exhibit A1 to Exhibit A3 partition deed. That deceased Surendran was mentally ill and he was under the care and protection of his brother Sudeendran. That Exhibit A1 to Exhibit A3 was executed by Sudeendran for and on behalf of Surendran as his guardian. It is also an admitted fact that after the death of Sudeendran in the year 2000, defendant No. 1 had applied before the Hon'ble District Court to appoint himself as the guardian of Surendran. Exhibit A10 is the order of the Hon'ble District Court in OP 19/ 2012, whereby Defendant No. 1 was appointed as the guardian of Surendran. Surendran died on 14.12.2013. Exhibit A4 is the death certificate of Surendran. It is not in dispute that after the death of Surendran, his right over the property devolved upon his mother Ammukutty Amma as his sole legal heir as Balakrishnan Nair, the husband of Ammukutty Amma had predeceased her. Ammukutty Amma died on 23.05.2016. Exhibit A5 is the death certificate of Ammukutty Amma. It is the case of the plaintiff that assets of Surendran in the hands of Ammukutty Amma, subsequent to her death devolved upon the plaintiff, defendants 1 to 3, Jayendran and defendant No. 4, (son of predeceased son of Ammukutty Amma, Sudeendran). While so Jayendran died on 21.02.2023 and his right over the property devolved upon his wife and daughter who

are defendants No. 5 and 6. Ext A7 is the death certificate of Jayendran. Accordingly, now plaint schedule property are jointly owned and possessed by the plaintiff and defendants.

11. The fact that after the death of Ammukutty Amma, her right over the property devolved upon Defendant No. 4 along with others is disputed by defendant No. 1. Defendant No.1 would contend that the property vested in Ammukutty Amma as the heir of Surendran will vest only in the heirs of Surendran after her death. Therefore, since Sudheendran died before Ammukutty Amma, the defendant No. 4 will not acquire any right in the property. So, after the death of Ammukutty Amma, plaint schedule property has to be divided into 5 shares. The learned counsel for defendant No. 1 would contend that as the property was inherited by Ammukutty Amma from her pre-deceased son Surendran, as per Section 15 (c) of the Hindu Succession Act, on the death of Ammukutty Amma, the property shall devolve not upon the other heirs of Ammu Kutty Amma, but it should devolve upon the heirs of her predeceased son, Surendran from whom she inherited the property. So, according to defendant No. 1, the property would devolve upon plaintiff, defendants No. 1 to 3 and Jayendran alone as per section 8 of Hindu Succession Act.

12. In this context, it would be better to extract the relevant provisions of the Hindu Succession Act including the Kerala Amendment Act 2015.

Section 15 (2) (c) of Hindu Succession (Kerala Amendment) Act 2015 reads as:

"(c) any property inherited by a female Hindu from her pre-deceased son shall devolve, not upon the other heirs referred to in sub-section (I) in the

order specified therein, but upon the heirs of the pre-deceased son from whom she inherited the property."

13. So if the case of defendant No. 1 is accepted, after the death of Ammukutty Amma, her right over the property would devolve upon the legal heirs of her predeceased son, Surendran in accordance with section 15(2)(c) of Hindu Succession Kerala (Amendment) Act. If that be so, when a male Hindu dies intestate, his right over the property would devolve as per Section 8 of the Hindu Succession Act.

14. Section 8 of Hindu Succession Act reads as:

"The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter:--

(a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;

(b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;

(c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and

(d) lastly, if there is no agnate, then upon the cognates of the deceased".

THE SCHEDULE HEIRS IN CLASS I AND CLASS II:

Class I:

Son; daughter; widow; mother; son of a pre-deceased son; daughter of a pre-deceased son; son of a pre-deceased daughter; daughter of a pre-deceased daughter; widow of a pre-deceased son; son of a pre-deceased son of a pre-deceased son; daughter of a pre-deceased son of a pre-deceased son; widow of a pre-deceased son of a pre-deceased son 1 [son of a predeceased daughter of a

pre-deceased daughter; daughter of a pre-deceased daughter of a pre-deceased daughter; daughter of a pre-deceased son of a pre-deceased daughter; daughter of a pre-deceased daughter of a pre-deceased son].

Class II

I. Father.

II. (1) Son's daughter's son, (2) son's daughter's daughter, (3) brother, (4) sister.

III. (1) Daughter's son's son, (2) daughter's son's daughter, (3) daughter's daughter's son, (4) daughter's daughter's daughter.

IV. (1) Brother's son, (2) sister's son, (3) brother's daughter, (4) sister's daughter.

V. Father's father; father's mother.

VI. Father's widow; brother's widow.

VII. Father's brother; father's sister.

VIII. Mother's father; mother's mother.

IX. Mother's brother; mother's sister.

Explanation.—In this Schedule, references to a brother or sister do not include references to a brother or sister by uterine blood.

15. So, if the contention of defendant No. 1 is accepted the property of Surendran on his death would devolve upon Class II heirs specified in clause (b) of Section 8, i.e., on his brothers and sisters, as on the death of Surendran there was no Class I heirs as specified in clause (a) and (b) of Section 8 of Hindu Succession Act.

16. The learned counsel for the plaintiff and defendants No. 2 to 6 have refuted the above contentions of defendant No. 1 stating that Hindu Succession Kerala (Amendment) Act 2015 had come into force on 10.11.2016. Whereas Ammukutty Amma had died on 23.05.2016 as evidenced by Exhibit A5 death certificate. So, as the succession has opened on the death of Ammukutty Amma on 23.05.2016, Section 15(2)(c) of the Kerala Amendment Act to Hindu Succession Act is not applicable in this case and the property has to be partitioned between the legal heirs of Ammukutty Amma as mentioned in Section 15(1) of the Hindu Succession Act.

17. Section 15(1) of Hindu Succession Act reads:

“(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16,

- (a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;
- (b) secondly, upon the heirs of the husband;
- (c) thirdly, upon the mother and father;
- (d) fourthly, upon the heirs of the father; and
- (e) lastly, upon the heirs of the mother”.

18. So, according to the plaintiff and defendants No. 2 to 6, after the death of Ammukutty Amma, her right over the property would devolve as per sub-clause (a) of Section 15(1) of the Hindu Succession Act upon her sons and daughters including the children of any pre-deceased son or daughter. Thus,

Defendant No. 4, being the son of pre-deceased son Sudheendran, is also entitled for his share in the property.

19. Counsel for defendant No. 1 would also contend that though the Kerala Amendment Act received the assent of the President only on 31.10.2016, the bill was passed by the Legislature on 15.12.2015. The learned counsel would also further contend that when a bill is passed by the Legislature, it would attain the status of law. To further buttress the contention, the learned counsel relied on Article 13(3) of the Indian Constitution. The learned counsel would argue that laws include laws passed by the Legislature. Reliance was also placed on the decision *Narayanan v. Meenakshi* (2006 (1) KLT 210).

20. I am unable to accept the above argument put forward by the learned counsel. If such a contention is accepted, when a bill is passed by the Legislature, it would have to be enforced without receiving the assent of the President or Governor as the case may be. This would amount to overriding the constitutional provisions.

21. In this connection, it is also worth to note section 3 of the Travancore- Cochin Interpretation and General Clauses (Amendment) Act 1957.

Section 3 (1) of the Act states:

“(1) Where any Act is not expressed to come into operation on a particular day, then it shall come into operation on the day on which the Act is first published in the

Gazette after it receives the assent of the Rajpramukh, the Governor or the President, as the case may be.

22. It is to be noted that section 1(3) of Hindu Succession Act (Kerala Amendment Act) states:

“(3) It shall come into force at once”.

23. Since Section 1 of Hindu Succession Act (Kerala Amendment Act) does not specify the date on which the Act shall come into force, going by Section 3 of the Travancore - Cochin Interpretation and General Clauses (Amendment) Act 1957, Section 15(2)(c) of the Hindu Succession Act (Kerala Amendment Act), shall come into operation on the day on which the Act was first published in the Gazette. It is seen that the Act was notified in the gazette on 10.11.2016.

24. So, it can be seen that Section 15(2) sub-clause of the Hindu Succession Act (Kerala Amendment Act), came into force on 10.11.2016. In the case on hand, it can be seen that Ammukutty Amma expired on 23.05.2016. So, on the date of death of Ammukutty Amma, Section 15(2) sub-clause of the Hindu Succession Act (Kerala Amendment Act) was not in force. So, the property vested with Ammukutty Amma would devolve as per Section 15(1)(a) of the Hindu Succession Act. So, it can be held that all the surviving children and the heirs of predeceased children of Ammukutty Amma are entitled to share in plaint B schedule property on the death of Ammukutty Amma.

25. Therefore, I am of the view that plaint B schedule property shall be divided into 12 equal shares and plaintiff shall be entitled to 2 out of 12 shares. Defendants No. 1, 2, 3 and 4 are entitled to 2 such shares each and defendants No. 5 and 6 shall be jointly entitled to two such share.

26. Defendant No. 1 has also put forward a claim for ₹ 1,76,842/- towards the expenses that he incurred for looking after Surendran. Defendant would contend that , vouchers for ₹ 1,61,798/- was accepted by Hon'ble District Court and he is entitled to recover the above amount from the property as a debt of Surendran and as such the property has to be made a charge till the realisation of the said amount.

27. To further substantiate his claim, he also produced Exhibit B1 to B1(b) documents. Exhibit B1 is the audit report submitted by Senior Clerk attached to the District Court, Kozhikode in OP 19/2012. The report would go to show that income derived from the property of Surendran for the period from 17.11.2012 to 31.03.2013 is ₹ 1,360/- and for the period from 01.04.2013 to 11.02.2014 is ₹ 3,550/-. Similarly, the expenses incurred by defendant No. 1 for the period from 17.11.2012 to 31.03.2013 is 12,594/- and for the period from 01.04.2013 to 11.02.2014 is ₹ 1,76,842/-.

28. However, as per Exhibit B1 report, the Auditor has stated that defendant No. 1 had only produced vouchers for ₹ 1,61,798/- in support of his claim. Exhibit B1(b) is the proceedings of First Additional District Judge, Kozhikode dated

6.6.2016 wherein it is seen stated that the account submitted by the guardian is accepted to the extent of which it is supported by voucher. The fact that defendant No. 1 has incurred an expense of ₹ 1,61,798/- for the management of the property and as a guardian of deceased Surendran is borne out from the documents produced by defendant No. 1. The plaintiff and other defendants do not have a case that the same was challenged by them in the above OP. So, defendant No. 1 is liable to be reimbursed for the amount spent by him. The said amount can be claimed only from the property of the deceased Surendran.

29. Section 57 of Mental Health Act, 1987 deals with Appointment and remuneration of guardians and managers. It states:

“(1) No person, who is the legal heir or a mentally ill person shall be appointed under sections 53, 54 or 55 to be the guardian of such mentally ill person or, as the case may be, the manager of his property unless the District Court or, as the case may be, the Collector, for reasons to be recorded in writing, considers that such appointment is for the benefit of the mentally ill person. (2) The guardian of a mentally ill person or the manager of his property or both appointed under this Act shall be paid, from out of the property of the mentally ill person, such allowance as the appointing authority may determine”.

30. Exhibit B1(b) proceedings of the Hon'ble Additional District Judge-I Court would go to show that defendant No. 1 has incurred an expense of ₹ 1,61,798/-. But there is no evidence before this court to show that defendant No. 1 has in fact not claimed the said amount before Hon'ble First Additional District Judge, Kozhikode. Clause 2 of Section 57 states that the guardian so appointed

under this Act shall be paid from out of the property of the mentally ill person, such allowances as the appointing authority may determine. So, the above claim raised by defendant No. 1 has to be put forward before the appointing authority. Hence, I find that defendant No. 1 is not entitled to recover the above claim for ₹ 1,62,000/- before this court.

31. From the discussion in the foregoing paragraph, I find that plaint schedule property is to be divided into 12 equal shares. Plaintiff is entitled to 2 out of 12 shares. Defendants No. 1, 2, 3 and 4 are entitled to 2 shares each and defendants No. 5 and 6 are jointly entitled to two such shares. Issues are answered accordingly.

32. **Issue No. 4:-** In view of my finding in Issue Nos. 1 to 3, I find that plaint B schedule property is partible into 12 equal shares.

In the result, suit is decreed and a preliminary decree is passed as follows:

- (a) That plaint B schedule property shall be partitioned into 12 equal shares.
- (b) That plaintiff is entitled to 2 out of 12 shares.
- (c) That defendants No. 1, 2, 3 and 4 are entitled to two such shares each.
- (d) That defendants No. 5 and 6 are jointly entitled to two such shares.

(e) Suit is adjourned to 01.01.2026 for taking steps under Order XX Rule 18 CPC.

(f) Cost of the suit shall come out of the estate.

(Dictated to the Confidential Asst., typed by her, corrected and pronounced by me in the open court, this the 27th day of November, 2025).

Sd/-

II ADDITIONAL SUB JUDGE.

Plaintiff's Witnesses :-

PW1 10.10.2025 - Sobhana M, Plaintiff

Plaintiff's Exhibits :-

A1	11-02.1996	-	Certified copy of document No. 142/1996
A2	11-02.1996	-	Certified copy of document No. 143/1996
A3	11-02.1996	-	Certified copy of document No. 144/1996
A4	01-02-2014	-	Copy of death certificate
A5	28.07.2016	-	Copy of death certificate
A6	24.02.2022	-	Copy of death certificate
A7	10.04.2023	-	Copy of death certificate
A8	05.04.2022	-	Copy of lawyer notice issued to defendants by plaintiff counsel
A9	22.04.2022	-	Copy of reply notice issued to plaintiff counsel by defendant
A10	17.11.2022	-	Certified copy of order in OP.19/12

Defendant's Witnesses :- NIL

Defendant's Exhibits :-

B1	04.10.2014	-	Copy of audit report
B1(a)	14.10.2014	-	Copy of income and expenditure statement
B1(b)	24.02.2014	-	Proceedings of Hon'ble Addl. District Judge I, Kozhikode
B2	23.03.2024	-	Legal heirship certificate

Sd/-
II ADDITIONAL SUB JUDGE

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