IN THE COURT OF THE SUBORDINATE JUDGE OF VATAKARA.

Present: Sri. Joji Thomas, Sub Judge.

Friday, the 20th day of February, 2026

ORIGINAL SUIT No.05/2024

Between:

Devi Amma.P.K, W/o Kunhikrishnan Adiyodi, Aged 97 years, Ganapathikandi House, Eravattoor amsom desom, Koyilandy taluk, Kozhikode District, Kerala.	Plaintiff

And:

Janaki Amma Ponnambath Koomulli, D/o Nani Amma, Aged 99 years, Puthiyottil House, Chorode amsom desom, Vatakara taluk, Kozhikode District, Kerala.	Defendant.

This suit coming on the 13th day of February, 2026 for final hearing before me in the presence of Smt. Rema.E.C, Advocate for Plaintiff and of Sri. Sijith.M, Advocate for Defendant and having stood over to this day for consideration, the Court delivered the following:

J U D G M E N T

Suit for partition.

2. The plaint averments, in brief, are as follows:- The plaint schedule property belongs jointly to the plaintiff and defendant by virtue of registered deed No. 3061 of 1943 of SRO Vatakara. About 75 years ago, the plaintiff and defendant constructed a building and a well, and the defendant is now residing therein. The plaintiff resides at Koyilandy, which is approximately 40 kilometers away from the plaint schedule property. The plaintiff, who is 97 years old, has

not received any share of the profits for the past 80 years. The defendant has been collecting the profits for these years. The plaint schedule property should be divided into two equal parts, with one part allotted to the plaintiff. The plaintiff is also entitled to a share of the profits. The original title deed is with the defendant. Despite several requests for partition, the defendant has not been cooperative. Hence, this suit.

3. The defendant filed written statement with the following contentions:- The defendant admits that the plaintiff is her younger sister and they are the owners of the plaint schedule property by virtue of the registered assignment deed No. 3061 of 1943 at the SRO Vatakara. The plaintiff and defendant belong to Peedikakandiyil Taraward, which follows the Marumakkathayam custom, and its properties are inherited through female members. Neither had any income in 1943. The plaint schedule property was purchased using the funds of the Taraward, approximately 30 meters from the main Taraward house. The elder male member of the Taraward is considered the Karanavar. The property was purchased with funds of the Taraward headed by Tharavtu Karanavar Krishnan Nambiar, after the death of the plaintiff's and defendant's mother during their childhood. All Taraward properties remain undivided and follow Marumakkathayam. The property was acquired prior to 01.12.1976, before the abolition of Marumakkathayam by virtue of Kerala Hindu Joint Family(Abolition) Act, 1975 (herein after in short as Joint Family Abolition

Act) and is not self-acquired. The plaintiff has three children and the defendant has five children. The children of plaintiff and defendant and their children are necessary parties because they have rights over the plaint schedule property by birth. Therefore, this suit is to be dismissed on grounds of non-joinder of necessary parties. Both the plaintiff and defendant were unemployed in 1943. The plaint schedule property is not self-acquired by either in 1943. The plaintiff and defendant had already assigned their father Ravunni Kuruppu's property in 1951, by Deed No. 647 of 1951 of the SRO Azhiyur, with proceeds spent on the plaintiff's marriage expenses at Guruvayur Temple, including gold ornaments. The plaintiff orally promised to assign her rights over the plaint schedule property to the defendant and handed over physical possession on 14.04.1951. There was an oral agreement to that effect. The plaintiff has resided in the house on the property since 14.04.1951 and has enjoyed it peacefully and continuously from 14.04.1957 onwards, with the knowledge of her and her successors, as the true owner. Therefore, the plaintiff and her successors have no right to claim ownership. The property has been enjoyed peacefully and continuously by the defendant and her successors as the true owners since 14.04.1951. Hence, the plaintiff has no right over the property, and the suit is liable to be dismissed.

4. The following issues are raised for trial:-

(1) Is the suit bad for non-joinder of necessary parties ?

(2) Is not plaint schedule property partible?

(3) If partible, what order as to shares ?

(4) Reliefs and costs?

5. No oral evidence is adduced from the side of plaintiff. However, Exts.A1 and A2 marked. The defendant was examined as DW1. Exts.B1 and B2 were marked. DW2 was also examined on her side.

6. Heard both sides. Both sides have also filed notes of arguments.

7. **Issues No. 1 to 3** :- As these issues are interconnected and evidence adduced are common, they are considered together for the sake of convenience and also to avoid repetition. The learned counsel appearing for the plaintiff submitted that the defendant has admitted in the written statement that the plaint schedule property is owned by the plaintiff and the defendant, by virtue of Ext A1, the title deed. She pointed out that the plaint schedule property is neither a family property nor acquired from the income of the family. She further noted that the consideration for acquiring the said property, as recited in Ext A1, was from funds obtained through a final decree, which was a right of the children. According to the counsel, no one other than the plaintiff and the defendant is entitled to any rights over the plaint schedule property. Finally, she observed that it is immaterial whether the plaintiff and defendant belong to Peedikakandy Tharavad, and the defendant admitted in cross-examination that the plaint schedule property is not a part of Peedikakandy Tharavad.

8. On the other hand, the learned counsel appearing for defendant submitted that although the plaint schedule property was purchased in the names

of the plaintiff and the defendant, it was acquired using family funds. Therefore, the plaint schedule property is a joint family property. He pointed out that, following the enactment of the Joint Family Abolition Act, which came into force on 01.12.1976, a notional partition took place effective from that date. He noted that the children of the plaintiff and defendant who are born prior to 01.12.1976 are also entitled to a share in the plaint schedule property based on this notional partition and are necessary parties to the suit. Additionally, he observed that even in the recital of Ext. A2, it is stated that the consideration was received from a final decree. Finally, he noted that since it is established that Peediyakandi Tharavad follows the Marumakkathayam system, the burden is on the plaintiff to prove that the plaint schedule property is self-acquired to divide the property into two, excluding other members who were born prior to 01.12.1976 and who have a right by birth to the family property. He relied on the decisions of Hon’ble Supreme Court of India in Achuthan Nair v. Chinnammu Amma and others (1966 KHC 440), in Appasaheb Peerappa Chandgade v. Devendra Peerappa Chandgade and others (2007 KHC 3028), in Vidhyadhar v. Manikrao and Another (AIR 1999 SC 1441), the decisions of Hon’ble High Court of Kerala in Mary v. Basura Devi (1967 KHC 172), in Benny Thomas v. State Bank of Tranvancore (2025 KER 17491), in Haridasan v. Padmavathi Amma (2025 KHC 610), in Mohanan E.P v. Pankajakshy (2025(2) KHC SN 32 (Page No.102) and in Changaroth Lakshmi Amma and Other v. C.Mohankumar and Others (2017(4)KLJ 404) to substantiate his contentions.

9. Before getting into discussion, it will be apposite to refer to the decisions relied on by the counsel appearing for the defendant. In Achuthan Nair v. Chinnammu Amma and others (1966 KHC 440), it was held that since the property in question was jointly acquired in the name of Karnavati of the Tawazhi and her son who was the de facto manager of the Tawazhi, there is strong presumption that it was acquired on behalf of the Tawazhi, since they were acting in a fiduciary capacity. In Appasaheb Peerappa Chandgade v. Devendra Peerappa Chandgade and others (2007 KHC 3028), it was held that the initial burden is on the plaintiff to show that the entire property was a joint Hindu family property and if the initial burden is discharged, then the burden shifts to the party alleging self acquisition to establish affirmatively that the property was acquired without the aid of the joint family property by cogent and necessary evidence. In Vidhyadhar v. Manikrao and Another (AIR 1999 SC 1441), it was held that where a party to the suit does not appear in the witness box, an adverse inference would arise against him. In Mary v. Basura Devi (1967 KHC 172), it was held that subsequent born child gets a right by birth in share obtained by mother in Tharavad partition. In Benny Thomas v. State Bank of Travancore (2025 KER 17491), the court affirmed that admitted facts need not be proved and emphasized the importance of timely objections to evidence. In Haridasan v/s Padmavathi Amma (2025 KHC 610), it was held that once plaintiff establish joint family existence, burden shifts to defendant to prove individual acquisition. In Mohanan E.P v. Pankajakshy (2025(2) KHC SN

32(Page No.102), it was held that once it is proved that there existence a joint family property and income is generated out of it, all other acquisitions are presumed as acquisition by joint family even if same are purchased in the name of members. In Changaroth Lakshmi Amma and Other v. C.Mohankumar and Others (2017(4) KLJ 404), it was held that under the Marumakkathayam Law, if a unit consist of all members having a common ancestor and her descendants, then it will assume the character of the thavazhi and subsequently born children of the female members who constituted the thavazhi will get right in the property by birth till 01.12.1976 and as on 01.12.1976, the rights of the parties is to be crystallized and from that day on wards, the members of the Marumakkathayam thavazhi will become co-owners and there will be deemed to be a partition as on that date. Keeping these principles in mind, the arguments of both sides are herein after analyzed.

10. The fact that the plaint schedule property stands in the names of the plaintiff and defendant by virtue of Ext. A1, the title deed, is not in dispute. Ext. A2 also shows that the basic tax is assessed in the names of the plaintiff and defendant. Ext. A1 is dated 15.08.1943; thus, the property was acquired before the coming into force of the Joint Family Abolition Act. The defendant's written statement states that neither the plaintiff nor the defendant has any independent funds, and the plaint schedule property was purchased using the funds of the Peedikakandy Tharavad. The question before the court is whether the property

was acquired in their names using family funds and thus formed part of the family property. If it is found that the property was acquired on behalf of the family in the names of the plaintiff and defendant using family funds, then other family members under female descendants born prior to 01.12.1976, are entitled to a share by operation of the notional partition under the Joint Family Abolition Act. The first issue in this case is whether the suit is bad for non-joinder of necessary parties. If this issue is decided against the plaintiff, the suit will necessarily fail. Moreover, if the defendant's contention is upheld, not only the plaintiff and defendant but also other family members, under female descendants including the children of the plaintiff born before 01.12.1976, are necessary parties. The defendant has also stated that the children of the plaintiff and defendant, and their descendants are entitled to a share in the plaint schedule property. However, this contention may not be correct, as only persons born prior to 01.12.1976 are entitled to rights by birth, since a notional partition took place by operation of the Joint Family Abolition Act on that date. Afterward, inheritance is to be understood on a per capita basis, and rights are no longer acquired by birth.

11. Admittedly, the plaintiff and defendant belong to Peedikakkandy Tharavad. The first question to be decided is whether Peedikakkandy Tharavad follows the Marumakkathayam system of inheritance. The defendant claimed that Peedikakkandy Tharavad follows Marumakkathayam. Both DW1 and DW2

deposed to this effect before the Court. In fact, there was little cross-examination on this point by the plaintiff. In other words, this fact was not specifically challenged during the cross-examination of DW1 and DW2. Furthermore, Ext. B1, the gift deed No. 1328 of 1973 of the SRO, Vatakara, shows that the property of Peedikakkandy Tharavad was gifted by the then Karanavathi of the Tharavad, namely Peedikakkandiyil Ponnambath Koomulli Parvathi Amma, in favor of Koomulli Janaki Amma. Such a transfer of property is only possible if the Tharavad follows the Marumakkathayam system. More significantly, the plaintiff has not come forward to state that Peedikakkandy Tharavad never followed Marumakkathayam. As already pointed out, this fact was not specifically disputed during the cross-examination of DW1 and DW2. Therefore, it must be taken as admitted that Peedikakkandy Tharavad follows the Marumakkathayam system of inheritance.

12. Needless to say, under the Marumakkathayam system of inheritance, all members of the family under female descendants acquire rights in the family property by birth. However, with the enactment of the Joint Family Abolition Act, this system of inheritance was abolished under Section 4. The Act came into force on 01.12.1976, and members of the family who were alive on that date were deemed to have rights by birth. As of 01.12.1976, a notional partition was considered to have taken place among those members. Significantly, the defendant has not specified in her written statement whether the children of the

plaintiff and defendant were alive as of 01.12.1976. Nevertheless, DW2, who is the son of the defendant, claimed that he was born prior to 01.12.1976. The petitioners in IA 5 of 2026, who are also two other children of the defendant, may also have been born prior to 01.12.1976, based on the ages they have claimed. However, there is no pleading in the written statement indicating which children of the plaintiff and defendant were born before 01.12.1976 and thus entitled to rights by birth. Indeed, the defendant has claimed that she has five children, and the plaintiff has three children. However, neither the ages nor the dates of birth of these children are specified in the written statement.

13. The next moot question is whether the plaint schedule property was acquired by the plaintiff and defendant out of the funds of the Peedikakkandy Tharavad. If the plaint schedule property was purchased using the funds of the Tharavad, then, although it was purchased in the names of the plaintiff and defendant, it can be considered as acquired on behalf of the family and thus form part of the Peedikakkandy Tharavad. In such a case, not only the plaintiff and defendant but also all members of the family—specifically, female descendants who were alive prior to 01.12.1976—would be entitled to rights in the plaint schedule property. However, the defendant does not take this stand. Instead, the defendant contends that the property forms a separate Thavazhi under the plaintiff, defendant, their children, and grandchildren, and they alone are entitled to share. As previously noted, this contention is not entirely correct, as only

members of the Thavazhi born prior to 01.12.1976 alone are entitled to a share by birth. In the absence of details regarding the ages and dates of birth of the children and the children of the daughters, the plea of non-joinder of necessary parties cannot be decided. It is needless to say that the plea of non-joinder of necessary parties will arise for consideration only if it is established that the plaint schedule property was acquired out of the funds of the joint family.

14. Indeed, if it is proved that Peedikakkandy Tharavad follows Marumakkathayam and that the said family generates income from its assets, the burden is on the members of the family who claim to have acquired property out of their own funds to prove this fact. In the present case, the defendant has established that Peedikakkandy Tharavad follows Marumakkathayam. However, no evidence has been adduced to establish that the assets of Peedikakkandy Tharavad generate income. Neither DW1 nor DW2 stated so before the court. Furthermore, the plaintiff was a minor, and the defendant was only 18 years old when they jointly acquired the property described in the plaint, evidenced by Ext. A1. It can be reasonably inferred that they had no income of their own to acquire the said property. The recital in Ext. A1 pertains to the source of consideration. According to Ext. A1, the consideration was obtained as a right of the children under a final decree 176 of 942. The details of this final decree, as recited in Ext. A1, have not been produced by either side. The year of the final

decree, recorded as 942, is also doubtful; it is likely that it was 1942, and that the property was acquired in 1943.

15. Admittedly, Ext. A1 is executed in favor of both the plaintiff and the defendant. If any property had been purchased with the funds of the joint family in the name of a family member or some, such a fact would typically be reflected in the deed. However, there is no such recital in Ext. A1. It is also evident from Ext. B1 that Karanavathi, executed a gift deed in favor of another family member to transfer property of the Tharavad. Ext. B1 is dated 06.09.1973. There can be no doubt that the assets of the Tharavad are managed by either the Karanavar or Karanavathi of the family, and the income of the family may also be managed by them. Without the concurrence of such a Karanavar or Karanavathi, the assets or income of the family cannot be utilized for acquiring property in any capacity other than on behalf of the family. If any assets are purchased out of the family's income, they are generally in the name of the Karanavar or Karanavathi. Even the defendant has not claimed that the source of consideration recited in Ext. A1 was received on behalf of the family. As already pointed out, the recital specifically states that the consideration for the property was the amount received as a right of the children under a final decree of partition. This fact has not been specifically denied in the written statement. In the absence of evidence establishing that the consideration received under the

final decree was on behalf of the family, it cannot be concluded that the plaint schedule property was purchased out of the family’s funds.

16. Coming to the oral evidence of DW1, during cross-examination, she admitted that the entire amount used to purchase the plaint schedule property was paid by her father. She also categorically acknowledged that both the plaintiff and the defendant have equal shares in the plaint schedule property. When questioned about whether the property, acquired prior to 1976, would be considered a family property, she gave no response. She did not deny a question to the effect that the contention that the claim that the plaint schedule property belongs to the Peedikakkandy Tharavad was falsely made for the purpose of the case. However, in re-examination, she claimed that the plaint schedule property is part of the Peedikakkandy Tharavad. Later, when further cross-examined, she deposed that the property was purchased by her father, who is not a member of the Peedikakkandy Tharavad, and that the property does not form part of the Tharavad. DW1 was examined through an Advocate Commissioner at her residence. She was 101 years old at the time of examination. The Advocate Commissioner reported that he ensured DW1 was competent to give evidence before recording her testimony. Neither the counsel for the defendant nor DW2 challenged her competence or her ability to provide rational answers.

17. Indeed, DW1 has backtracked from her earlier stance in cross-examination during re-examination, where she stated that the property listed in

the plaint schedule was purchased using her family's funds. However, during further cross-examination, she maintained that the property was never part of Peedikakkandy Tharavad and was purchased by her father. An analysis of DW1's testimony clearly indicates that she does not concede any rights in the plaint schedule property for anyone other than the plaintiff and the defendant, despite allegations to the contrary in the written statement. She maintained that her father purchased the property jointly in their names. Since there is an admission that the plaint schedule property belongs to both the plaintiff and the defendant, and that it was purchased by her father in their names, the argument that it was acquired out of the funds of the joint family cannot be sustained. Consequently, the plaint schedule property never formed part of the Peedikakkandy Tharavad. The absence of any oral evidence on the side of the plaintiff will not affect the plaintiff’s case due to this admission. Therefore, the property should be partitioned between the plaintiff and the defendant. The plea of ouster raised in the written statement, although not pressed during arguments, also does not hold, as DW1 admitted that she and the plaintiff alone have rights over the property. These issues are accordingly found in favor of the plaintiff.

18. **Issue No.4**:- In the light of finding in issue No.1 to 3, a preliminary decree is to be passed dividing plaint schedule property into two between plaintiff and the defendant. This issue is found accordingly.

In the result, the preliminary decree is passed as follows:-

(I) The plaint schedule property shall be divided into two equal parts.

(ii) The plaintiff and defendant are entitled to one such part each.

(iii) The question of equity over building situated in plaint schedule property and claim of share of profits is relegated to final decree proceedings.

(iv) The costs of suit shall be borne out of the estate.

(v) Any of the parties may take steps to pass final decree by appointment of Advocate Commissioner.

(Dictated to C.A, typed by her in Office computer, corrected and pronounced by me in Open Court, on this the 20th day of February, 2026).

Sd/-
SUB-JUDGE,
VATAKARA

Plaintiff's Witness: NIL

Plaintiff's Exhibits:

A1	15/09/1943 :	Registration copy of Assignment deed No. 3061/1947 of SRO, Azhiyur executed by Kunhichathukurup infavour of Janaki Amma and others.
A2	05/04/2023 :	Land Tax Receipt issued by the Village Officer, Chorode to Janu Amma and others.

Defendant's Witnesses:

DW1	09/01/2026 :	Janaki, D/o Ramunnikurup.
DW2	17/01/2026 :	Jayarajan.P, S/o Kunhiramakurup.

Defendant's Exhibits:

B1	06/09/1973 :	Registration copy of Gift deed No. 1328/73 executed by Peedika Kandiyil Ponnambath Koomulli Parvathi Amma infavour of Janaki Amma.
B2	09/04/1957 :	Registration copy of Assignment deed No. 647/1957 of SRO, Azhiyur executed by Janaki Amma and Devi Amma infavour of Meenakshi Amma and others.

Sd/-
SUB-JUDGE,
VATAKARA

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Fair/Copy of Judgment in
OS.05/24 Dated: 20/02/2026.