

**IN THE COURT OF THE MUNSIF, HARIPAD**  
**Present: Smt. Sreelakshmi.C, Munsiff**  
**Monday 14<sup>th</sup> day of March 2022/23<sup>rd</sup> Phalgunam, 1943**  
**O.S.No. 245/2017**

(Filed on 26-08-2017)

**Plaintiffs:**

1. Padmavathiyamma, Aged 62 years,  
W/o Unnikrishna Pillai, Anitha Bhavan,  
Puthenpurayil Veettil, Kuttoor Muri, Kuttoor  
Village, Thiuvalla Taluk.
2. Radhakrishnan, Aged 40 years,  
S/o Unnikrishna Pillai of do-do.
3. Anilkumar, Aged 42 years,  
S/o Unnikrshna Pillai of do-do
4. Anitha, Aged 38 years, D/o Padmavathiyamma  
of do-do.
5. Parameswaran Pillai, Aged 72 years,  
S/o Narayana Pillai, Saji Bhavanam Veettil,  
Erickavu Muri, Kumarapuram Village.
6. Narayana Pillai, Aged 69 years,  
S/o Narayana Pillai, Mithramom,  
Kannadi.P.O, Pulinkunnu, Alappuzha.
7. Sankara Pillai, Aged 63 years,  
S/o Naryana Pillai, Sreesabariyil, Karuvatta  
Thekku Muri, Kumarapuram Village.
8. Ponnamma, Aged 64 years,  
D/o Kunjulekshmiyamma, Thunduthara  
Parambil Padeettathil, Erickavu Muri,  
Kumarapuram Village.
9. Rajappan Nair, Aged 62 years,  
S/o Sreedharan Nair, Kotteykkattu Veettil,  
Erickavu Muri, Kumarapuram Village.
10. Chandran Pillai, Aged 58 years,  
S/o Sreedharan Nair of do-do

11. Suseela, Aged 45 years, W/o Sasikumar of do-do
12. Divya, Aged 20 years, D/o Suseela of do-do.

**(By Adv.Sri. B.Sivaprasad)**

**Defendants:**

1. Ramanchandran Pillai, Aged 69 years, S/o Naryana Pillai, Kotteykkattu Veettil, Erickavu Muri, Kumarapuram Village.
2. Omanayamma, Aged 60 years, W/o Ramachandran Pillai of do-do
3. Uma, Aged 41 years, D/o Omanayamma of do-do
4. Prasannakumar, Aged 38 years, S/o Unnikrishna Pillai, Anitha Bhavan, Puthenpurayil Veettil, Kuttoor Muri, Kuttoor Village, Thiruvalla Taluk.
5. Harikrishnan, Aged 49 years, S/o Sreedharan Nair, Kottaykkattu Veettil, Erickavu Muri, Kumarapuram Village.

**(D5 By Adv. Sri. M.A.Jayakrishnan)**

This Suit having been finally heard on 24-02-2022 and the court on the 14-03-2022 delivered the following:

**J U D G M E N T**

Suit for partition, separate possession and permanent prohibitory injunction.

2. The averments in the plaint in brief are as follows: -

Plaintiff Nos.5 to 8 and 1<sup>st</sup> defendant are siblings. Plaintiff Nos.1 to 4 and 4<sup>th</sup> defendant are the legal heirs of deceased brother of plaintiff Nos.5

to 8 and 1<sup>st</sup> defendant named Unnikrishna Pillai. Plaintiff Nos.9 and 10 and 5<sup>th</sup> defendant are the legal representatives of deceased sister of plaintiff Nos.5 to 8 and 1<sup>st</sup> defendant named Rajamma. Defendant Nos.11 and 12 are the wife and daughter of deceased Sasikumar, who is the son of deceased Rajamma. 2<sup>nd</sup> defendant is the wife of 1<sup>st</sup> defendant and 3<sup>rd</sup> defendant is their daughter.

3. The properties including plaint schedule item Nos.1 and 2 properties was obtained by Narayana Pillai (father of plaintiff Nos.5 to 8, 1<sup>st</sup> defendant, deceased Unnikrishna Pillai and deceased Rajamma) by way of partition deed No.4056 of 1105 ME of Sub Registrar Office, Karthikappally, sale deed Nos.3805 of 1113 ME, 2012 of 1120 ME, decree of Munsiff Court, Harippad in O.S.No.723 of 1107, sale deed Nos.4252 of 1118 ME, 842 of 1964 and a pattayam bearing No.2159 of Kumarapuram Village Office. Narayana Pillai partitioned the properties scheduled in the above said deeds by executing a gift deed dated 12.11.1974 and accordingly the respective shares of the properties were owned and possessed by the respective sharers since then. Plaint schedule item No.1 property is 13 cents of property and a building situated thereon, which was remained in the name of said Narayana Pillai. Narayana Pillai died intestate without creating any document in respect of the above 13 cents of property and the building comprised therein. Plaint schedule item No.2 property measuring 14 cents was gifted by Narayana Pillai to his wife Lekshmiyamma, who died intestate without creating any document in respect of the said portion of land. With respect to item No.3 pond

measuring 4 cents, said Narayana Pillai did not execute any document prior to his death. Plaintiff schedule item No.5 property, which was gifted by Narayana Pillai to 1<sup>st</sup> defendant by way of gift deed No.3572 dated 12.11.1974 was situated away from other plaintiff schedule properties. Fifteen years ago, plaintiff Nos.5 to 10 constructed a new house having four rooms and kitchen in the place of old family house using their own savings, as it was in a dilapidated condition. Now defendant Nos.1 to 3 are residing in the family house situated on plaintiff schedule item No.1 property with the permission of other co-owners. The plaintiff schedule properties are in the joint possession and enjoyment of the plaintiffs and defendants and also they are taking yield therefrom.

4. Matter being so, the plaintiffs and defendants entered into an agreement to partition the plaintiff schedule properties by metes and bounds. Whiles, 1<sup>st</sup> defendant preferred a civil litigation against the plaintiffs raising unnecessary claims and obtained an injunction order against the plaintiffs. On 18.08.2017, when defendant Nos.1 to 3 attempted to cut and remove the trees standing on plaintiff schedule properties, plaintiffs interfered and prevented their attempt. The plaintiffs had demanded the defendant Nos.1 to 3 to effect partition of the plaintiff schedule properties. The defendants have refused such demand on lame excuses. Also that, the defendants threatened that they would alienate the plaintiff schedule properties to third parties. Plaintiff Nos.1 to 4 and 4<sup>th</sup> defendant are entitled to get 1/7<sup>th</sup> right over the

plaint schedule properties. Plaintiff Nos.5 to 8 are entitled to get 4/7<sup>th</sup> right over the properties. Plaintiff Nos.9 to 12 and 5<sup>th</sup> defendant are entitled to get 1/7<sup>th</sup> right and 1<sup>st</sup> defendant has got 1/7<sup>th</sup> right over the plaint schedule properties. Stating as above, the suit was filed for partition of the plaint schedule properties by metes and bounds. It was also prayed to restrain defendant Nos.1 to 3 from cutting or removing the trees standing there on the plaint schedule properties, causing any destruction to the building situated in the plaint schedule item No.1 property and also from committing any act of waste on the plaint schedule properties.

5. On receipt of summons, the 1<sup>st</sup> and 2<sup>nd</sup> defendants entered appearance. Subsequently, they failed to turn up and file written statement. Hence they were set ex parte. Even though paper publication was effected against defendant Nos.3 to 5, defendant Nos.3 and 4 failed to turn up. Accordingly, they were also set exparte. Defendant No.5 entered appearance and filed written statement admitting the plaint averments.

6. From the side of the plaintiffs, three witnesses were examined as PW1 to PW3. Exts.A1 to A7 were marked. The commission report, mahazar and rough sketch were marked as Exts.C1(a) to C1(c) on the side of the plaintiffs. Exts.X1 and X2 were also marked.

7. PW1, the 9<sup>th</sup> plaintiff, filed affidavit in lieu of examination in chief reiterating all the averments in the plaint. Ext.A1 is the certified copy gift deed No.3572/1974 of Sub Registrar Office, Harippad by way of which Narayana

Pillai gifted properties excluding plaint schedule item Nos.1 and 3 to its respective sharers. PW1 deposed that with respect to plaint schedule item Nos.1 and 3 properties, Narayana Pillai has not executed any document prior to his death. As per Ext.A1, 14 cents of property (plaint schedule item No.2 property as described in the plaint) was gifted by Narayana Pillai to his wife Lekshmiyamma. According to PW1, said Lekshmiyamma died intestate without creating any document with respect to plaint schedule item No.2 property. According to PW1, plaintiff Nos.1 to 4 and 4<sup>th</sup> defendant are entitled to get 1/7<sup>th</sup> right over the plaint schedule properties. Plaintiff Nos.5 to 8 are entitled to get 4/7<sup>th</sup> right in it. Plaintiff Nos.9 to 12 and 5<sup>th</sup> defendant are entitled to get 1/7<sup>th</sup> right and 1<sup>st</sup> defendant has got 1/7<sup>th</sup> right over the plaint schedule properties.

8. Ext.A3 is the certified copy of sale deed No.2012 of 1120 ME. Ext.A4 is the certified copy of sale deed No.842/1964. Ext.A5 is the certified copy of sale deed No.4252 of 1953. Ext.A6 is the certified copy of sale deed No.1683 of 1118 ME. Ext.A7 is the certified copy of sale deed No.3805 of 1113 ME. According to PW1, Narayana Pillai is in the absolute owner in possession of properties including plaint schedule item Nos.1 to 3 properties by way of Exts.A3 to A7 deeds. Hence plaint schedule properties are partible. After the demise of said Narayana Pillai, plaintiffs and defendants are the co-owners of those properties, as they are the sole legal heirs of said Narayana Pillai.

9. PW2 is the Sub Registrar Officer, Harippad. PW2 deposed that on application filed under Right to Information Act by one Rajappan Nair to get the certified copy of partition deed No.4056 of 1105 ME, Ext.A2 reply dated 14.12.2020 issued by PW2 to PW1, which contains his signature and office seal. It is stated in Ext.A2 that the pages including deed No.4056 are found to be destroyed due to old-age and hence copy of the same is not available at present. Ext.X1 is the file containing the application for getting certified copy of deed No.4056 of 1105 ME and copy of its reply.

10. PW3 is the then Village Officer of Kumarapuram Village. She produced the original and copy of document required as per summons. Ext.X2 is the copy of relevant page of thandapper register. According to PW3, the properties involved in Ext.X2 is in the name of Sankarapillai Narayana Pillai. On 24.09.2020 land tax was paying through online. Ext.X2 contains her signature and office seal.

11. Exts.C1(a) to C1(c) are the commission mahazar, report and rough sketch prepared by the advocate commissioner after visiting the plaint schedule properties. The lie and nature of the properties as observed by the commissioner was mentioned in Ext.C1 report. There were no physical boundaries separating plaint schedule item No.1 property with the property of Rajappan Nair. Plaint schedule item No.1 property was reported as a square plot. A residential house was situated in plaint schedule item No.1 property. A

temporary shed was situated in plaint schedule item No.2 property. Plaint schedule item No.3 property is reported as a pond having depth of 15 feet.

12. Despite service of summons and paper publication, all defendants except 5<sup>th</sup> defendant remained ex parte. The contesting 5<sup>th</sup> defendant filed written statement admitting the plaintiffs' case. On the basis of the admission made by the 5<sup>th</sup> defendant, I hold that the plaint schedule properties are partible and plaintiff Nos.1 to 4 and 4<sup>th</sup> defendant are entitled to get 1/7<sup>th</sup> right over the plaint schedule properties. Plaintiff Nos.5 to 8 are entitled to get 4/7<sup>th</sup> right each over plaint schedule item Nos.1 to 3 properties. Plaintiff Nos.9 to 12 and 5<sup>th</sup> defendant are entitled to get 1/7<sup>th</sup> right and 1<sup>st</sup> defendant has got 1/7<sup>th</sup> right over the plaint schedule properties.

13. Moreover, plaintiffs seek for a decree of permanent prohibitory injunction restraining the defendant Nos.1 to 3 from cutting or removing the trees standing there on the plaint schedule properties, causing any destruction to the building situated in the plaint schedule item No.1 property and also from committing any act of waste on the plaint schedule properties. Since it is already found that the plaint schedule properties are partible and the plaint schedule properties are ordered to be partitioned the plaintiffs are entitled to permanent prohibitory injunction as prayed for.

14. Considering the facts and circumstances and relationship between the parties, no costs is ordered.

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

1. Plaintiff schedule properties are found partible and ordered to be divided into seven equal parts by metes and bounds.
2. Plaintiff Nos.1 to 4 and 4<sup>th</sup> defendant are entitled to get 1/7<sup>th</sup> right over the plaintiff schedule properties.
3. Plaintiff Nos.5 to 8 are entitled to get 4/7<sup>th</sup> right over plaintiff schedule properties.
4. Plaintiff Nos.9 to 12 and 5<sup>th</sup> defendant are entitled to get 1/7<sup>th</sup> right and 1<sup>st</sup> defendant has got 1/7<sup>th</sup> right over the plaintiff schedule properties.
5. Plaintiffs and defendants are entitled to be put in separate possession of their respective shares in plaintiff schedule properties.
6. Parties are directed to file final decree application for passing final decree within one month from today failing which the decree will be consigned to the record section.
7. No order as to cost.
8. Suit is adjourned sine die.

*Dictated to the Confl. Asst., transcribed and typed by her, corrected and pronounced by me in open court on this the 14<sup>th</sup> day of March, 2022.*

Sd/-

**SREELAKSHMI C.  
MUNSIFF**

**Appendix:**

**Witness for the Plaintiff**

PW1.	06-03-2020	Rajappan Nair.
PW2.	19-02-2021	Abdul Nazar.A
PW3.	18-03-2021	N.Sudhamani

**Exhibits for the Plaintiff:-**

Ext.A1.	12-11-1974	Certified copy of Gift deed No.3572/74
Ext.A2.	14-12-2020	Reply
Ext.A3.		Certified copy of Sale deed No.2012/1120ME
Ext.A4.	10-03-1964	Certified copy of Sale deed No.842/1964
Ext.A5.	07-10-1955	Certified copy of Sale deed No.4252/1953
Ext.A6.		Certified copy of Sale deed No.1683/1118ME dtd.26 Chingam 1118
Ext.A 7.		Certified copy of of Sale deed No.3805/1113

Court Exhibits:-

Ext.C1(a)	10-11-2017	Mahazar prepared by Commissioner Adv.Smt.M.S.Sunitha.
Ext.C1(b)	10-11-2017	Report prepared by Commissioner Adv. Smt.M.S.Sunitha.
Ext.C1(c)	10-11-2017	Rough Sketch prepared by Commissioner Adv.Smt. M.S.Sunitha.

Witness Exhibits:-

Ext.X1.	14-12-2020	The file containing the application for getting certified copy of deed No.4056 of 1105ME and copy of its reply.
Ext.X2.		Copy of relevant page of Thandaper Register.

Id/-  
**MUNSIF**

//True copy//