

**IN THE COURT OF THE MUNSIFF, KAYAMKULAM**

Present: Smt. Aneesa.A, Munsiff

Tuesday the 28<sup>th</sup> day of October, 2025/6<sup>th</sup> Karthika,1947

**IA.21/2025 in OS.65/2023**

(Filed on 21.10.2025)

**Petitioner:**

Abdul Wahid, S/o.Koyakutty,  
Kottappurathu Veedu,  
Kayamkulam Muri,  
Kayamkulam Village.

(By Adv.G.Ashok kumar)

**Respondents:**

1. Liyakhath Kutty,  
S/o.Koyakkutty,  
Kottappurathu Veedu,  
Kayamkulam Muri,  
Kayamkulam Village.
2. Asya Beevi, D/o.Koyakkutty,  
Alumoottil, Near Mini Civil Station,  
Harippad P.O.
3. Noorjahan, D/o.Koyakkutty,  
Panippurayil Veedu,  
Kayamkulam Muri,  
Kayamkulam Village.

4. Adabiya Beevi,  
W/o.Shahul Hameed,  
Kumbalathu Veedu,  
Medamukku,  
Kayamkulam Muri,  
Kayamkulam Village.
  
5. Shebeer Muhammad,  
S/o.Shahul Hameed,  
Kumbalathu Veedu,  
Medamukku,  
Kayamkulam Muri,  
Kayamkulam Village.
  
6. Sabeena, D/o.Shahul Hameed,  
Kumbalathu Veedu,  
Medamukku,  
Kayamkulam Muri,  
Kayamkulam Village.

**(D1 by Adv.C.D.Anil)**

**(D2 to D6 by Adv.M.R.Salim)**

This petition is coming on for hearing on 28.10.2025 and the court of the same day passed the following.

**ORDER**

This is a petition filed under S.45 of Indian Evidence Act.

**2. The gist of averments in the petition are as follows:-**

Petitioner is the plaintiff in the above case. The suit is filed for partitioning the plaint scheduled property by metes and bounds, the separation of the share of plaintiff and permanent prohibitory injunction. The plaint scheduled property is situated in the centre of Kayamkulam town and is having a market value of Crores of Rupees. The 1<sup>st</sup> defendant is making malicious acts with the intention of denying the share of petitioner who is a heart patient, in the plaint scheduled property. The 1<sup>st</sup> defendant filed separate written statement in this suit and the defendants No.2 to 6 jointly filed written statement stating that the plaint scheduled property is partible and their share in the plaint scheduled property is also to be separated. In the written statements, the defendants did not make any contention with respect to the right of Smt.Alima Umma, the mother of plaintiff in the plaint scheduled properties. But the 1<sup>st</sup> defendant in his written statement filed on 15.02.2023, it was stated that at the life time of Smt.Alima Umma, she had transferred her right in plaint scheduled

item Nos.1 and 2 properties to the 1<sup>st</sup> defendant. Only a vague contention was stated in the written statement and the details of transfer of right was not stated in it. In the additional written statement filed on 25.08.2025 by the 1<sup>st</sup> defendant after the amendment of plaint also, no details of said document was mentioned. No documents or deeds with respect to that right was produced along with the written statements or at the time of pre-trial steps. The mother of plaintiff Smt.Alima Umma was resided in the residential building situates on the plaint scheduled item No.1 property along with the plaintiff till her death on 23.02.2006. Even one year before her death, she was bed ridden due to age old ailments and she was unable to do her own affairs. She was resided only in the family house situates in the plaint scheduled item No.1 property. Except that residential building, she was resided nowhere. There was no circumstances to execute any deeds or documents with respect to the plaint scheduled property. Within the knowledge of the plaintiff, his mother has not executed any such deeds or documents. As per the speedy disposal direction of Hon'ble High Court Of Kerala, this case was listed for trial on 04.10.2025. At the time of list or the dates

06.10.2025, 08.10.2025, 10.10.2025, 13.10.2025 in which the PW1 was cross examined by the learned counsel for the 1<sup>st</sup> defendant, no such record was produced. But on 15.10.2025, at the final stage of the cross examination of PW1, the learned counsel for the defendant put a document from his office file and cross examined PW1 by stating that it is a Will deed executed by the mother of the plaintiff in favour of 1<sup>st</sup> defendant. The learned counsel for the plaintiff objected the marking of said document and the document was marked as Ext.B2 subject to proof. But the said document was not admitted by PW1 in his cross examination. PW1 deposed that his mother Alima Umma had not been executed such a Will deed and the signatures seen in the said deed is a forged one and not that of his mother. The 1<sup>st</sup> defendant with the intention of obtaining the plaint scheduled item Nos.1 and 2 properties which were situated at the heart portion of Kayamkulam town fraudulently created Ext.B2 document. Since the document was not produced in the suit in time and the details of the said document was not mentioned in the written statement, the plaintiff has not got an opportunity to prove that the said document is a forged one. The signatures in all pages of Ext.B2 against the name

of Smt. Alima Umma is forged one and not that of her. Moreover, the thumb impression seen in Ext. B2 is also not that of Smt. Alima Umma. This document is created without the consent or with the presence of Smt. Alima Umma. The said document is only a forged one and not binding on the 1<sup>st</sup> defendant's right over plaintiff scheduled item Nos. 1 and 2 properties. For the just decision of this case, in order to prove that the said document is a forged one, it is to be sent for Forensic Science Laboratory for expert opinion. On the death of Sri. Jabbarkutty, the son of Alima Umma with respect to the plaintiff's and Alima Umma's rights over his property was transferred in the name of Shanija, the daughter of Jabbarkutty by virtue of Sale deed No. 1332/2005 of Kayamkulam S.R.O. Thereafter, the said right was purchased by the 1<sup>st</sup> defendant from Shanija by virtue of a sale deed. Thus the 1<sup>st</sup> defendant admitted sale deed No. 1332/2005 in which the signatures and the thumb impressions of Alima Umma. The said sale deed No. 1332/2005 was produced from the side of the 1<sup>st</sup> defendant on 06.10.2025. Moreover, in the filing sheet No. 339 to 402 in Sub Registrar's Office, Kayamkulam in volume No. 1229 and in the endorsement register, there is the signatures and thumb impressions

of deceased Alima Umma. Thus the signatures of Smt.Alima Umma seen in forged Ext.B2 is to be compared with the signatures and thumb impressions seen in Sale deed No.1332/2005 and with the signatures in filing sheet No.399 to 402, volume 1229 and endorsement register containing the signatures and thumb impressions of Alima Umma. Thus for comparing the signatures and thumb impressions of Smt.Alima Umma in the above mentioned documents, it is to be sent to forensic and finger print expert. Thus, the petition.

3. **The respondent/1<sup>st</sup>defendant filed objection contending inter alia as follows:-** The petition is not maintainable either in laws or on facts. Ext.B2 is admitted in evidence subject to proof. The burden of proof to prove a Will deed is upon the legatee, the 1<sup>st</sup> defendant. Here, the burden of proof is on the 1<sup>st</sup> defendant and only if the burden of proof is shifted to the plaintiff, he has the duty to prove the same. At the time of execution of Ext.B2, the mother of plaintiff and defendants was healthy and capable for executing such a document. With a sound mind, she executed Ext.B2 with respect to the plaint scheduled properties. The averments in the paragraphs

No.2 and 3 of the affidavit are false and hence denied. The averment that the defendants No.2 to 6 filed written statement stating that the plaintiff scheduled properties are partible is false and hence denied. The averment that the execution of the will deed and the details of it was suppressed in the written statement is false and hence denied. As per Order VIII Rule 1A(4), the defendants have every right to produce a document at the time of cross examination of the plaintiff. The averments in the 4<sup>th</sup> and 5<sup>th</sup> paragraph of the affidavit is false and hence denied. The averment that even one year before the death of Smt.Alima Umma, she was laid up and unable to due her day to day affairs is false and hence denied. Smt.Alima Umma was healthy and in sound mind till her death. After fully knowing the contents of Ext.B2, she executed the same. The averment that the defendant with the intention of denying the share of plaintiff purposefully doing malicious acts against the plaintiff is false and hence denied. The averments in the 6<sup>th</sup> paragraph of the affidavit is false and hence denied. The averment that the signatures and thumb impressions seen in Ext.B2 is not of Alima Umma is false and hence denied. The Ext.B2 is legally executed before the S.R.O, Kayamkulam and the signatures

and thumb impressions were affixed by her. The averments in the 7<sup>th</sup> paragraph of the affidavit is false and hence denied. The plaintiff admitted that at the time of execution of sale deed in the year 2005, Smt.Alima Umma was of sound mind and hence the plaintiff is estopped from taking the contention that Smt.Alima Umma is not capable of executing Ext.B2 in the year 2003. There is no need to sent the documents to FSL for comparing the signatures of Alima Umma. The plaintiff has no burden of proof. Thus the petition is not maintainable and it is to be dismissed.

4. The following points are formulated for consideration:-

1. Whether the prayer to sent the document for comparison to an expert is allowable?
2. Reliefs and costs?

5. Heard both sides.

6. **Point No.1**:- This suit is filed for partitioning the plaint scheduled property by metes and bounds and for separating the share of plaintiff and for permanent prohibitory injunction. The 1<sup>st</sup> defendant/respondent contended that with respect to plaint scheduled item Nos.1 and 2 properties, his mother executed Ext.B2

Will deed in the year 2003. Thus he has the sole right over the said property. But the petitioner denied the signatures of Smt. Alima Umma in Ext.B2 Will deed. According to the petitioners, the signatures and thumb impressions seen in Ext.B2 is fraudulently created by the 1<sup>st</sup> defendant and his mother Alima Umma was not in a fit mental and physical condition at the time of execution of Ext.B2. Both sides admitted the signatures and thumb impressions of Alima Umma seen in sale deed No.1332/2005 of Kayamkulam S.R.O. Thus the plaintiff contended that the signatures and thumb impressions seen in Ext.B2 is compared with the same and the signatures seen in the filing sheet No.399 to 402 of volume 1229 of Kayamkulam S.R.O and the endorsement register containing the signatures of Alima Umma. Even though the burden to prove Ext.B2 Will deed is upon the 1<sup>st</sup> defendant, the propounder, it will not curtail the right of plaintiff to prove the same. In the said circumstances, the petitioner proved foundation to her prayer to send the document to an expert. Therefore, the prayer is allowable and point No.1 is found in favour of the petitioner.

7. **Point No.2**:- On point No.1, it is found that the prayer in the I.A is allowable. Considering the facts and circumstances of the case, no order as to costs.

**In the result**, I.A. is allowed. The petitioner is directed to take steps to send the document to Forensic Science Laboratory, Thiruvananthapuram. No order as to costs.

*(Dictated to the confidential assistant, typed by her, corrected and pronounced by me in open court on 28<sup>th</sup> day of October, 2025)*

Sd/-  
ANEESA.A,  
MUNSIFF

APPENDIX - Nil.

Sd/- MUNSIFF

*// True copy //*

MUNSIFF

Typed by:Shafeek  
Compd.by