

IN THE COURT OF THE SUB JUDGE, CHENGANNUR**Present:- Smt.Veena.V.S, Sub Judge****Wednesday, the 18th March 2026/ 27th Phalgunam 1947****O.S.No.24/2024****(Filed on: 30.09.2024)**

Plaintiff :- Santhosh Oommen @ Santhosh.P.Oommen
Aged 53 years,S/o. Oommen.P.O
Painummoottil Veedu, Thittamel Muri,
Chengannur Village, Now residing at
Santhosh Oommen, 1102, Shear Water in Garland,
Texas, 75043, U.S.A, Phone No. 001-469-386-
3730, Represented by Power of Attorney
Holder Mohanan Pillai.R, S/o. Ramakrishna Pillai,
Mohanvilla, Budhanoor P.O, Ennaykkadu Village,
Chengannur Taluk, Pin – 689 510.

(By Adv. Koshy Thomas)

Defendants :-

1. Salomy Thomas, aged 51 years,
W/o. Thomas Joboy Philip,
Anjilimootttil Veedu, Cherukole Muri,
Ezhakadavu.P.O, Pin 609 104, Chennithala Village,
Mavelikara Taluk, Residing at Salomy Thomas,
2537, EREC DR, The Colony, Texas, 75056, U.S.A
2. Thomas Joboy Philip, aged 53 years
Anjilimootttil Veedu, Cherukole Muri, Ezhakadavu.P.O,
Pin 690104, Chennithala Village, Mavelikara Taluk.
Residing at C/o. Salomy Thomas, 2537, EREC DR,
The Colony, Texas, 75056, U.S.A

3. Lillykutty.E.M, aged 83 years,
Painummoottil Veedu, Thittamel Muri,
Chengannur Village, Pin 689 121, Chennithala Village,
Mavelikara Taluk, Residing at Lillykutty,
1102, Shear Water in Garland, Texas, 75043, U.S.A.

(D1 & D2 By Adv.Jaison John, D3 – By Adv. Noel Dani Charles)

This suit having been finally heard on 17.03.2026 and the court on 18.03.2026 delivered the following.

JUDGMENT

The suit is for cancellation of deeds and mutation, partition and permanent prohibitory injunction.

Plaint averments in brief are as follows.

2. The plaintiff and the 1st defendant are the children of the 3rd defendant. The 2nd defendant is the husband of the 1st defendant. Since the plaintiff has been residing in USA the suit is filed through his Power of Attorney Holder who is the caretaker of the property of the plaintiff and well aware of the facts of the case. The 3rd defendant and her husband created much liabilities on the properties and the said liabilities were clear off by the plaintiff. The marriage of the 1st defendant was also under the responsibility of the plaintiff. The plaintiff settled the bank loan of the 3rd

defendant and her husband for sending the 1st and the 2nd defendants into USA. The husband of the 3rd defendant passed away. They acquired the plaint schedule property by virtue of sale deed vide No. 736/1977. Later, 3rd defendant transferred 13 Ares 22 Sq. metre of property to the 1st defendant by executing a Settlement Deed vide No. 809/2015 for which the 3rd defendant has no right. The 3rd defendant is entitled only a half share over the plaint schedule property. The plaintiff or the 1st defendant were not shown as the legal heirs of P.O. Oommen in the said deed. Further the 1st defendant and the 3rd defendant jointly executed a Settlement Deed vide No. 2314/1/2015 in favour of the plaintiff by transferring 26 Ares 78 Sq. metre of property. The said document is also not a valid one. The tharavad house and the property having more land value were granted to the 1st defendant whereas only a barren land was granted to the plaintiff. The properties were mutated without considering the legality of the documents executed by the defendants. The 1st defendant subsequently transferred the property allotted to her in favour of the 2nd defendant by executing another document. There was a stipulation in the settlement deed executed in favour of the 1st defendant is that she will look after the 3rd defendant. She violated the said condition and the sister of the 3rd defendant were looking after the 3rd defendant. Knowing the same the plaintiff brought her into USA and now

she is residing with the plaintiff. Even though the 3rd defendant filed a petition before RDO, Chengannur for the cancellation of settlement deed with an allegation that the 1st defendant did not look after her, the petition could not be proceeded with when the 3rd defendant failed appear in person before the said court by complying the order. The 1st and the 2nd defendants constructed fencing by fixing boundary stones, levelling the soil with JCB, demolished septic tank and covered the well in the plaint schedule property. They have no right to do so. The plaintiff is entitled to get ½ share over the plaint schedule property. Hence the suit is filed.

3. The 1st and the 2nd defendant filed written statement with the following contentions. The suit is not maintainable either in law or on facts. The plaint schedule property is not at all partible. The plaintiff did not settle any debt of his parents or took the responsibility and expense of the marriage of the 1st defendant. The parents of the plaintiff and the 1st defendant are financially sound. The plaint schedule property comprised in Resurvey No. 231/21 and the building situated therein was purchased by the 3rd defendant and her husband by virtue of sale deed vide No. 736/77. The schedule item No.2 property in the said document absolutely belonged to the 3rd defendant and thereby she transferred the said property in favour of the 1st plaintiff by executing settlement deed vide No. 809/2015. The said

property was further transferred by the 1st defendant to the 2nd defendant by executing settlement deed vide No. 123/2023 and the said property was mutated in the name of the 2nd defendant and the resurvey number of the said property after the sub division is resurvey 231/35. The plaintiff has no locus standi to challenge the execution of the said document as the said property was absolutely vested with the 3rd plaintiff who transferred the same to the 1st defendant. The plaintiff has no right over the said property. Since the 1st and the 2nd defendants are the absolute owner in possession of the said property they constructed fencing on the boundaries of the said property. The 3rd defendant was residing in the tharavad house and taking usufructs from the plaint schedule property with the help of a maid appointed by the 1st defendant. But the plaintiff without considering the will and health of the 3rd defendant took her into USA. The 3rd defendant did not file any complaint before any institutions against the 1st plaintiff. The 1st defendant and the 3rd defendant transferred their share over the property of P.O. Oommen by executing a Settlement Deed vide No. 2314/2015 in favour of the plaintiff. The documents are valid one and the plaintiff has no right to challenge the genuinity of the said document. The plaintiff has no cause of action against the defendants. Hence the suit may be dismissed.

4. The 3rd defendant filed written statement by admitting paragraph Nos. 1 to 3, 7, 9, 13, 25 and 26 of the plaint. She admitted the plaint averments in paragraph Nos. 4, 5, 12 partly without stating what facts are denied by her in the said paragraph. Further she contended that she was employed in Chengannur Municipality and earning pension. Now she is residing with plaintiff who is looking after her. The court fee is not sufficiently paid. According to her, the documents are validly executed as per law.

5. From the above pleadings the following issues were raised for consideration.

1. *Whether the settlement deeds executed by the defendants and its mutation are liable to be cancelled?*
2. *Whether the plaint schedule property is partible, If so, what is the quantum of shares?*
3. *Whether the plaintiff is entitled to the permanent prohibitory injunction is prayed for?*
4. *Reliefs and costs?*

6. From the side of the plaintiff Exbt. A1 to A6 documents were marked. PW1 to PW3 were examined. The commission report, plan and mahazar were marked as Exbt. C1 series. From the side of the defendant

DW1 was examined Exbt. B1 to B5 documents were marked.

7. Heard the defendant. The plaintiff's part is taken as heard as the learned counsel for the plaintiff submitted that he does not argue the case. Perused the records.

Issue No.1 :-

8. The specific case of the plaintiff is that the plaintiff and the 1st defendant are the children of the 3rd defendant and late P.O. Oommen. The plaintiff schedule property originally belonged to the 3rd defendant and P.O. Oommen by virtue of sale deed vide No. 736/1977. But after the death of P.O. Oommen the said property was transferred by the 1st and the 3rd defendants in favour of the plaintiff and the 1st defendant by executing settlement deeds vide No. 809/2015 and 2314/1/2015 without the knowledge of the plaintiff. He is also the legal heir of late P.O. Oommen. According to the plaintiff, the 3rd defendant had no right to execute the aforementioned settlement deeds as she is entitled only ½ share over the plaintiff schedule property. Further he alleged that there is a stipulation in the settlement deed executed in favour of the 1st defendant that she should look after the 3rd defendant. But she violated the said stipulation in the settlement deed. The defendants vehemently challenged the plaintiff averments and contended that the documents are valid ones. The property under the

absolute ownership of the 3rd defendant was transferred to the 1st defendant and the plaintiff has no locus standi to challenge the same. Further the right of the 1st defendant and the 3rd defendant over the property of late P.O. Oommen was transferred in favour of the plaintiff for which the consent or the presence of the plaintiff is not required.

9. So as to establish the case of the plaintiff he has examined PW1 to PW3 and adduced Exbt. A1 to A6 documents. Exbt. A1 is the Power of Attorney executed by the plaintiff in favour of one Mohanan Pillai for instituting and conducting case for him. Exbt. A2 is the settlement deed vide No. 809/2015 executed by the 3rd defendant in favour of the 1st defendant. Exbt. A3 is the settlement deed vide No. 2314/1/2015 executed by the 3rd and the 1st defendants in favour of the plaintiff. Exbt. A4 is the sale deed vide No. 736/1977 whereby P.O. Oommen and the 3rd defendant acquired right over the plaint schedule property. Exbt. A5 is the Power of Attorney executed by the 3rd defendant in favour of her sister. Exbt. A6 is the encumbrance certificate of the plaint schedule property.

10. The plaint schedule property shown in the plaint is the property mentioned in Exbt. A4 sale deed. On perusal of Exbt. A4 sale deed vide No. 736/1977 it made clear that there are two schedule properties incorporated in the said document. The 3rd defendant or her husband P.O. Oommen have

no joint ownership over the entire properties shown in the said sale deed. As per the said sale deed the schedule No.1 property was absolutely transferred to P.O. Oommen and the 2nd schedule property was absolutely transferred to Lillykutty who is the 3rd defendant.

11. The 3rd defendant by executing Exbt. A2 document transferred the 2nd schedule property mentioned in Exbt. A4 deed in favour of the 1st defendant who is her daughter. The 3rd defendant being the absolute owner of schedule item No.2 property in Exbt. A4 document, she can transfer her absolute ownership over the said property in favour of any person as per her will without obtaining any consent or permission from her husband or her children. The written statement of the 3rd defendant revealed that she voluntarily executed Exbt. A2 in favour of the 2nd defendant. Neither the plaintiff nor the 3rd defendant alleged that the said document was executed under the vitiating circumstances such as coercion, misrepresentation, undue influence or fraud.

12. The specific allegation of the plaintiff is that the 3rd defendant is only a legal heir of P.O Oommen and have only $\frac{1}{2}$ share over the plaintiff schedule property. But Exbt. A4 sale deed itself proved the fact that with respect to the 2nd schedule property mentioned in the said deed the 3rd defendant has absolute ownership and she has every right to transfer the said

property in favour of the 1st defendant by executing Exbt. A2 settlement deed. The 1st defendant can claim absolute ownership over the property mentioned in Exbt. A2 document and can transfer the said property to any person according to her will. The 3rd defendant or the 1st defendant need not seek the permission of the plaintiff to transfer the property under their absolute ownership. The plaintiff has no locus standi to challenge the validity of Exbt. A2 document executed in favour of the 1st defendant by the 3rd defendant who was the absolute owner of the said property.

13. The plaintiff also challenged the validity of Exbt. A3 settlement deed executed by the 1st and the 3rd defendants in his favour. He challenged that the said document was also executed by the 1st and 3rd defendants without considering the right of the plaintiff as the legal heir of P.O Oommen. As stated earlier P.O Oommen acquired absolute ownership over the 1st schedule of property in Exbt. A4 document. Admittedly after his death, the plaintiff, 1st defendant and 3rd defendant are his sole legal heirs.

14. On going through Exbt. A3 settlement deed it made clear that the executants admitted the fact that the 1st and the 3rd defendants and the plaintiff are the legal heirs of late P.O. Oommen who is the absolute owner of the 1st schedule property in Exbt. A4 sale deed. The 1st and the 3rd defendants who are the executants transferred their 2/3rd right over the said

property in favour of the plaintiff by admitting his 1/3rd right as the legal heir of late P.O. Oommen. In Exbt. A3 settlement deed it is mentioned as പട്ടിക വസ്തുവിൽ ഞങ്ങൾക്കുള്ള 2/3 അവകാശം കൂടി തങ്ങൾക്കുള്ള ഒരു അവകാശത്തോടുചേർത്ത് മുഴുവൻ അവകാശവും മേൽ നമ്പർ തണ്ടപ്പേരിൽ നിന്നും കുറവുചെയ്ത് ഇന്നുമുതൽ താങ്കളുടെ പേരിൽ കൂട്ടി പട്ടയം വിടിച്ചും കരം തീർത്തും നടന്നുകൊള്ളണം.

15. Nonetheless on the conjoint reading of Exbt. A4 and Exbt. A3 document, it is apparent that after the death of P.O. Oommen, the 2/3rd right of the 1st and the 3rd defendants as the legal heirs of P.O. Oommen was transferred in favour of the plaintiff who also has 1/3rd right over the said property as the legal heir of P.O. Oommen. The 1st and the 3rd defendants did not transfer more right than they entitled by executing Exbt. A3 document in favour of the plaintiff. For transferring their 2/3rd right over the 1st schedule of Exbt. A4 sale deed as the legal heir of late P.O. Oommen, they need not obtain the permission or consent of the plaintiff as it was without disturbing his 1/3rd right over the said property. So the presence of the plaintiff or his consent is not at all required to the 1st and the 3rd defendants for transferring their right over the property mentioned in Exbt. A4 sale deed. Thus I hold that the allegation of the plaintiff that the defendants transferred more right over the plaintiff schedule property without

considering his right as a legal heir is not sustainable before the court of law.

16. Further it is relevant to note that Exbt. X1 to X3 revenue records and the oral evidence of PW3, the Village Officer shows that the said property was mutated in the name of the plaintiff. When the plaintiff was examined as PW1 during trial he admitted that his Power of Attorney Holder is the caretaker of the said property that he acquired as per Exbt. A3 document and his Power of Attorney Holder takes care of the said property. So it is obvious that he admitted the said document and accepted the property covered in Exbt. A3 document. At this juncture, he is estopped from challenging the validity of the said document.

17. On the closer scrutiny of the case of the plaintiff it made clear that he has no consistency in his claims. In the plaint he challenged the validity of Exbt. A2 and A3 documents by alleging that the 1st and the 3rd defendants transferred more extent of right than they entitled over the plaint schedule property without considering the right of the plaintiff as the legal heir of late P.O. Oommen. But when the plaintiff was examined as PW1, he challenged the said documents because of the reason that those documents were executed in his absence. When his wife was examined as PW2, she deposed that there was a prior agreement between her father and P.O. Oommen who is the father of the plaintiff that the entire family property would be granted

to PW1 and PW2. But in her affidavit she deposed that when her father gave dowry, the 3rd defendant and P.O. Oommen agreed to grant the family property as a security to PW1 and PW2. It is interesting to note that the plaintiff does not have any such case either in the plaint or during trial. It is a new fact come out in evidence without the support of the pleading. So the said fact need not be looked into. It is the settled principle of law that the new facts arose during trial without the support of pleading should not be considered.

18. Another allegation raised in the plaint is that there is a stipulation in Exbt. A2 settlement deed that the 1st defendant will look after the 3rd defendant who is her mother. But she violated the said stipulation and abandoned her mother. Now she is under the protection of the plaintiff who is her son at USA. On perusal of Exbt. A2 settlement deed it made clear that life interest of the 3rd defendant was reserved while transferring the property mentioned therein to the 1st defendant. It is a trite law that reserving life interest is not a condition precedent or a bar in transferring the absolute ownership over an immovable property to any person. If the 1st defendant denied the life interest of the 3rd defendant, it is the 3rd defendant who has to seek remedy for enforcing her limited right of life interest over the property transferred to the 1st defendant by executing Exbt. A2

document. The plaintiff has no locus standi to challenge the said violation if any or to challenge the validity of the document. For the sake of argument even if it is believed that the 1st defendant denied the life interest of the 3rd defendant, the absolute ownership of the 1st defendant over the property acquired as per Exbt. A2 document will not be diminished. Because the absolute ownership of the 3rd defendant was transferred in favour of the 1st defendant from the moment when Exbt. A2 document was executed and registered. Thenafter the donor has no transferable right, title or interest over the property. The said dictum is well discussed in **Jose Paul v. Paul and another reported in 2018 (4) KHC 152.**

19. The oral evidence of PW3 the Village Officer revealed that there is a mistake in mentioning the old survey Number of the plaint schedule property in Exbt. A4 deed and in the plaint schedule description also the survey number of the plaint schedule property is shown as 92/1A and 1B. In Exbt. A2 and A3 which are the subsequent deeds executed on the strength of Exbt. A4, the very same old survey number were incorporated along with the new survey number. Exbt. X1 to X3 documents show that the resurvey number of the plaint schedule property covered under Exbt. A2, A3 and B4 deeds are Resurvey No.231/21 and 231/25. When the plaintiff questioned the legality of mutating the plaint schedule property on the basis

of resurvey number of the properties, PW3 explained that when resurvey number came in to effect the mutation of the property is effected on the basis of the resurvey number of the property and the old survey number need not be examined. He further deposed that the property of P.O Oommen and his wife Lillykutty Oommen is situated in Resurvey 231/21 having extent of 40 Ares. 12 Ares 64 Sq. metre was mutated subsequently into the thandaper account of Lillykutty Oommen and the sub Division number was allotted to the said property as 231/35. Now the said property is in the name of Thomas Joboy Philip who is the 2nd defendant in this case. 25 Ares are mutated in the name of the plaintiff in resurvey number 231/21. Exbt. X1 to X3 documents are sufficient to corroborate his oral evidence. Since the plaintiff claimed right over the plaint schedule property on the strength of Exbt. A4 document, the mistake in the old survey no in Exbt. A4 deed and subsequent documents cannot be considered as the fraudulent act of the revenue authorities as alleged by the plaintiff. It is pertinent to note that in the plaint the plaintiff does not have a case that the survey number of the plaint schedule property in Exbt. A4 document or in the subsequent documents are not correct. The correct resurvey number of the plaint schedule property is described in Exbt. A2 and A3 documents. So I do not find any sufficient ground to suspect the revenue authorities in the mutation

proceedings of the plaint schedule properties as per the description of the property in Exbt. A2 and A3 deeds.

20. Further it is revealed from the plaint that even if the plaintiff sought to cancell Exbt. A2 and Exbt. A3 settlement deeds by challenging the validity of both deeds, he did not ready to remit court fee for annulling Exbt A3, settlement deed executed by the 1st and the 3rd defendants in his favour. Moreover, the plaintiff is not the executant of Exbt. A2 and A3 settlement deeds. But he sought the relief of cancellation of those settlement deeds executed by the 1st and the 3rd defendants. It is the settled legal position that only the executant can sought the relief of cancellation of sale deeds. In **Suhrid Singh @ Sardool Singh v. Randhir Singh and others reported in 2010 KHC 4216** the Hon'ble Supreme Court held that where the executant of a deed wanted to annul a deed, he had to seek cancellation of the deed. But if a non- executant seeks annulment of a deed he has to seek a declaration that the deed is invalid or non-est or illegal or that is not binding on him. In fact, the plaintiff could not succeed without seeking such a relief or getting the said relief allowed. The decision is squarely applicable in the present case also. The plaintiff did not seek the proper relief by remitting sufficient court fee for setting aside Exbt. A2 and A3 documents even though in the plaint averments he challenged the validity of Exbt. A2

and A3 documents. Hence on that aspect also the suit is found not maintainable.

21. From the above discussion I hold that the evidence adduced from the side of the plaintiff are not sufficient to prove his case. The evidence adduced before the court shows that the plaint schedule property is not under the joint possession and joint ownership of the plaintiff, the 1st and the 3rd defendants. The documents executed by the 1st and the 3rd defendants with respect to the plaint schedule property are found valid as they have transferred their right only over the plaint schedule property. The plaintiff has no right or title over the property mentioned in Exbt. A2 settlement deed which was executed by the 3rd defendant who was the absolute owner of the said property. His 1/3rd right over the property covered in the 1st schedule of Exbt. A4 document was not affected by the execution of Exbt. A3 document executed by the 1st and the 3rd defendants by transferring their 2/3rd right in favour of the plaintiff. The plaint schedule property is not at all partible. It is under the absolute possession and ownership of the plaintiff and the 2nd defendant and the property is mutated in their name on the strength of their title deeds. So the plaintiff is not entitled to get any reliefs as prayed for. Issue Nos. 1 to 3 are found against the plaintiff.

Issue No.4:-

22. Since the plaintiff has not succeeded to prove his case the plaintiff is not entitled to get any reliefs as prayed for. The defendants are entitled to get costs from the plaintiff.

In the result, the suit is dismissed with the costs of the defendants.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced in Open Court on this the 18th day of March 2026)

Sd/-
Veena. V.S
Sub Judge

Appendix**Witness from the side of the Plaintiff:**

PW1	-	03.02.2026	-	Santhosh Oommen
PW2	-	03.02.2026	-	Annie Santhosh
PW3	-	16.02.2026	-	Arunkumar.C

Exhibits from the side of the plaintiff:

A1	-	11.09.2024	-	Power of Attorney executed by the plaintiff in favour of Mohanan Pillai.
A2	-	18.04.2015	-	Settlement deed vide No. 809/2015 executed by Lillykutty Oommen in favour of Salomi Thomas.
A3	-	30.10.2015	-	Settlement deed No. 2314/1/2015 executed by Lillykutty and Salomi Thomas in favour of Santhosh Oommen.
A4	-	09.03.1977	-	Sale Deed No. 736/1977.

A5	-	23.11.2021	-	Power of Attorney executed by Lillykutty Oommen in favour of Salin Koshy.
A6	-	15.11.2021	-	Encumbrance Certificate of the plaint schedule property.

Witness from the side of the defendant:-

DW1	-	03.03.2026	-	Oommen Kochayipp.
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Exhibits from the side of the defendants:-

B1	-	15.11.2024	-	Power of attorney executed between Thomas Joboy Philip and Salomi Thomas.
B2	-	09.03.1977	-	Certified copy of Sale deed No. 736/1977
B3	-	18.04.2015	-	Settlement deed No. 809/15
B4	-	21.01.2023	-	Settlement deed No. 123/23
B5	-	24.01.2023	-	Land tax receipt.

Court Exhibits:-

C1	-	03.10.2024	-	Mahazar prepared by Adv. Commissioner Adv. Ishan.M.S
C2	-	19.10.2024	-	Report prepared by Adv. Commissioner Adv. Ishan.M.S
C3	-	03.10.2024	-	Rough Sketch prepared by Adv. Commissioner Adv. Ishan.M.S

Other Exhibits:-

X1	-	16.02.2026	-	Basic Tax Register (BTR) produced by Village Officer, Chengannur.
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- X2(a) - 16.02.2026 - Thandaper produced by Village Officer, Chengannur.
- X2(b) - 16.02.2026 - Thandaper produced by Village Officer, Chengannur.
- X2(c) - 16.02.2026 - Thandaper produced by Village Officer, Chengannur.
- X2(d) - 16.02.2026 - BTR produced by Village Officer, Chengannur.
- X3(a) - 16.02.2026 - Thandaper produced by Village Officer, Chengannur.
- X3(b) - 16.02.2026 - Thandaper produced by Village Officer, Chengannur.

Id/-
Sub Judge

// True copy//

Sub Judge