IN THE COURT OF THE MUNSIFF, CHENGANNUR
Present : Smt. Amala Lawrence, Munsiff,
Tuesday 31st day of March 2026 / 10th Chaitra 1948

OS 5/2022
(Filed on 05.01.2022)

Plaintiff: Jessy Abraham, aged 60 years,
10B,Cheloor Elranarodo Flatil,
Kusumagiri P.O, Kakkanattukarayil
Nilambathanji Primukal Road,
Ernakulam District From
Patterumadathil,
Chengannur Railway P.O,
Chengannur Thittamel Muri,
Chengannur Taluk.

(By Adv.C.N.Ammanchy and
Adv. A.V.Suresh)

Defendants: 1. P.A.Abraham, aged 67 years,
S/o late C.A Abraham,
Patterumadathil House, , Chengannur
Railway P.O, Chengannur Thittamel Muri,
Chengannur Taluk.

2. Sherly Jacob, aged 64 years,
W/o Joseph Jacob,
Mattaikkal Puthukkeri Veettil,
Niranam Village, Thiruvalla Taluk,
Pathanamthitta District From
Patterumadathil,
Chengannur Railway P.O,
Chengannur Thittamel Muri,
Chengannur Taluk.

(By Adv. Abraham Joseph)

This Suit having been finally heard on 21.03.2026 and court on the 31.03.2026 delivered the following.

JUDGMENT

This suit is filed for declaration, partition and permanent prohibitory injunction.

2. **Plaint averments, in brief, are as follows:-** The present suit is filed for partition of the plaint schedule property, which is presently in the possession of the first defendant. The first defendant is in possession of the property derived from his father and grandfather, and the same is liable to be partitioned among the plaintiff and the defendants, each being entitled to an equal one-third share. The plaintiff and the first defendant are siblings, and the second defendant is the elder sister of the plaintiff. The plaintiff was married on 11th April 1985 and resided at Kottayam with her husband and two children were born out of the said wedlock. Owing to the husband's alcoholism, the marriage was dissolved, and thereafter the plaintiff returned to reside in the family house along with the first defendant. The plaintiff was engaged in running a playschool business and was maintaining herself independently. At the time of her marriage, the plaintiff received a sum of Rs. 1,00,000/- from the family property. Subsequently, upon her remarriage on 04.02.2004, the plaintiff began residing in a rented house, and the first defendant paid a sum of Rs. 2,00,000/- to the plaintiff. It was the intention of the plaintiff’s father and mother to allot 10 cents of land from the

family property to the plaintiff, which was openly expressed before the family members. However, the plaintiff alleges that the first defendant, by exercising undue influence over their mother, Aleyamma, caused the property standing in her name to be transferred in his favour by virtue of Settlement Deed No. 700/1989. The said settlement deed is void ab initio and does not confer any valid title upon the first defendant.

3. The plaintiff and the second defendant have lawful rights over the plaint schedule property, and the first defendant has no legal right to continue in exclusive possession without effecting partition Further, properties originally owned by the father, C.A. Abraham, were also transferred in favour of the first defendant by virtue of Sale Deed No. 657/1991 dated 20.03.1991 and Sale Deed No. 59 dated 08.01.1992. These transactions are also void ab initio and not binding on the plaintiff and the second defendant. The property obtained by the first defendant under Settlement Deed No. 700/1989 is described as Plaint Schedule Item No. 1. The property obtained under Sale Deed No. 657/1991 is described as Plaint Schedule Item No. 2, and the property obtained under Sale Deed No. 59/1992 is described as Plaint Schedule Item No. 3. The plaintiff, along with the first and second defendants, is entitled to rights over Plaint Schedule Item Nos. 1, 2 and 3 properties, and the plaintiff is specifically entitled to a one-

third share in the said properties. For the purpose of partitioning the plaint schedule properties, a legal notice was issued to the first defendant; however, no reply was received from the first defendant. In the above circumstances, the present suit is filed for partition of the plaint schedule properties and for declaration of the plaintiff's right to a one-third share therein. The plaintiff also seeks a decree of permanent prohibitory injunction restraining the first defendant from alienating Plaint Schedule Item Nos. 1, 2 and 3 properties until partition by metes and bounds.

4. Though summon was duly served upon the second defendant, the second defendant neither appeared before the Court nor was represented. Hence, the second defendant was set exparte.

5. **First Defendant filed written statement alleging the following contentions:-** The suit is not maintainable either in law or on facts. At the time of the marriage of the plaintiff in 1985, the plaintiff was provided with 50 sovereigns of gold ornaments and an amount of ₹1,00,000/-. In addition to the said amount, this defendant paid a sum of ₹25,000/- to the plaintiff's first husband as pocket money. However, due to reasons best known to the plaintiff, the said marriage ended in divorce. Two children, a daughter and a son, were born to the plaintiff in the said wedlock. At the time of the divorce, the entire amount

paid as patrimony and the gold ornaments worn by the plaintiff at the time of marriage were returned to her by the first husband. All such assets are in the custody of the plaintiff. The children born in the said marriage were brought up by the plaintiff with the support of her parents. The first defendant also incurred substantial expenses for the higher education of the children and for the marriage of the daughter.

6. The second marriage of the plaintiff was of her own choice and not due to any residential inconvenience in the family home. At that time, the plaintiff was residing in the family house with her parents, while first defendant was employed abroad and residing with his family at his place of employment. The entire expenses of the plaintiff's second marriage were borne by first defendant, who spent more than ₹2,00,000/- as gifts to the bridegroom and an additional sum of ₹1,50,000/- towards marriage expenses. About two years after the second marriage, when the defendant was in India on vacation, the plaintiff and her second husband borrowed an amount of ₹3,00,000/- from the defendant, which has not been repaid to date. The averment that the parents of the plaintiff agreed to convey 10 cents of land to the plaintiff from the family property is false. It is also false to allege that the defendant exercised undue influence over the parents and procured execution of documents. The mother of the plaintiff and

the defendant executed Settlement Deed No. 731/1989 dated 28.03.1989 and Settlement Deed No. 770/1989 dated 03.04.1989, whereby she conveyed the plaint schedule Item No. 1 property in favour of this defendant, out of her love and affection. The intention of the executant is evident from the recitals of the said documents. This defendant has been in lawful possession and enjoyment of the plaint schedule Item No. 1 property since then.

7. The allegation that the defendant undue influenced the father to execute documents is also false and baseless. The father of the plaintiff and the defendant executed Sale deed No. 657/1991 dated 20.03.1991 and Sale deed No. 54/1992 dated 08.01.1992, whereby he conveyed plaint schedule Item Nos. 2 and 3 properties in favour of this defendant for valid consideration. The defendant has been in lawful possession and enjoyment of the said properties since 1991 and 1992 respectively. The defendant never exercised any undue influence or fraud, upon the parents for the execution of the said documents. At the time of execution, the defendant was employed abroad and came to know of the execution only during his visit to India. The defendant is the absolute owner in possession of the plaint schedule properties by virtue of Settlement Deed Nos. 731/1989 dated 28.03.1989, 770/1989 dated 03.04.1989, and Sale deed Nos. 657/1991 and 54/1992, executed more than 30 years ago. The properties have been duly mutated in

his name, and he has been regularly paying land tax. The said documents were validly executed by the parents of the defendant. At the time of their death, they had no other properties left, and hence the plaint schedule properties are not partible. The residential and commercial buildings in the plaint schedule properties were constructed while the parents were alive. The defendant, being the owner in possession, is entitled to receive rent from the buildings. The plaintiff is attempting to misuse the relationship with the defendant. Despite the financial assistance extended by the defendant, the plaintiff has no manner of right, title, or possession over the plaint schedule properties. The suit is not properly valued, and the requisite court fee has not been paid. Hence, the suit is liable to be dismissed.

8. Based on the above pleadings the following issues arose for consideration:

I. Is the plaintiff entitled for a declaration as sought for?

II. Is the plaint schedule property partible? If so what is the share each party entitled to?

III. Is the plaintiff entitled for a decree of permanent prohibitory as sought for?

IV. Reliefs and costs?

Additional Issues:

I. Is the suit barred by Limitation?

II. Is the court fees paid sufficient?

9. Heard the learned counsel for both sides.

10. To prove the case of the plaintiff, proof affidavit was filed by the plaintiff in lieu of examination in chief and was examined as PW1 and Exts.A1 to A5 documents were marked. An independent witness was examined as PW2. From the side of the defendants, proof affidavit was filed by the first defendant in lieu of examination in chief and was examined as DW1 and Exts. B4 to B6 documents were marked. Ext.B1 to B3 were marked through PW1.

11. **Additional Issue No.I** :- The case of the plaintiff is that the plaint schedule Item Nos. 1, 2 and 3 properties are partible among the plaintiff, the first defendant, and the second defendant. The plaintiff claims a one-third right over the plaint schedule properties, which originally belonged to and were in the absolute ownership and possession of the father and mother of the plaintiff and the defendants. According to the plaintiff, the plaint schedule Item Nos. 1, 2 and 3 properties are presently in the ownership and possession of the first defendant, who obtained the same by exercising undue influence over the parents. It is alleged that the first defendant induced the mother to execute

Deed No. 700 of 1989 in his favour in respect of the property which was in her absolute ownership, and the said property is described as plaint schedule Item No. 1 property.

12. It is further contended that the property which was in the absolute ownership of the father was also transferred in favour of the first defendant by exerting undue influence. By virtue of Sale Deed No. 657 of 1991, the said property was transferred in the name of the first defendant, which is described as plaint schedule Item No. 2 property. Similarly, another property was transferred in favour of the first defendant by exercising undue influence over the father through Sale Deed No. 59 of 1992, which is described as plaint schedule Item No. 3. According to the plaintiff, all these documents were executed in favour of the first defendant by exerting undue influence over the parents and are therefore void ab initio. Hence, the plaintiff seeks a declaration of his one-third right over the plaint schedule properties and for partition and separate possession of his share, along with a decree for permanent prohibitory injunction.

13. The first contention raised by the first defendant is that the suit is not maintainable and is barred by limitation. In a suit for declaration, the cause of action must arise within the prescribed period of limitation of three years. The learned counsel for the plaintiff argued before the Court that there are no

pleadings in the written statement regarding the defendant's case that the suit is barred by limitation. Therefore, according to the plaintiff, such a contention cannot be raised at the stage of final hearing and cannot be considered by this Court at this stage. Section 3 of the Limitation Act mandates that every suit instituted after the prescribed period shall be barred by limitation, even if limitation is not set up as a defence. Therefore, it is the duty of the Court to independently examine whether the reliefs claimed are within prescribed time. Hence, the argument of the plaintiff that it was not raised as a defence in the pleadings is not sustainable.

14. The question of limitation in the present case has to be considered by carefully distinguishing between the relief of partition and the relief of declaration sought by the plaintiff, in the light of the provisions of the Limitation Act, 1963. Insofar as the relief of declaration is concerned, the plaintiff seeks a declaration of her 1/3rd right over the plaint schedule properties by alleging that Exts. A1 to A3 deeds are void *ab initio*, which are documents executed in the years 1989, 1991, and 1992. Such a relief squarely falls under Article 58, which prescribes a limitation period of three years from the date when the right to sue first accrues. According to the plaintiff, the cause of action arose when notice was issued on 16/10/2021 demanding partition of the plaint schedule properties, which was not complied with by the defendants. In the

present case, the plaintiff has no specific plea that she came to know of these documents at a later point of time, nor is there a proper pleading invoking undue influence discovered subsequently. In the absence of such pleadings, the Court is bound to presume that the right to sue accrued at the time of execution of the documents. Hence, the challenge against Exts. A1 to A3, having been made after several decades, is clearly barred by limitation, and the declaratory relief cannot be granted. However, the position is different with respect to the relief of partition. It is a settled principle that a suit for partition among co-owners is governed by the concept of a continuing cause of action. There is no specific period of limitation prescribed for seeking partition so long as the property remains in joint ownership and possession. Limitation would begin to run only when there is a clear denial of the plaintiff's right, coupled with exclusive possession by the defendant to the knowledge of the plaintiff.

15. In the present case, the plaintiff alleges that Exts. A1 to A3 were obtained by exercising undue influence and seeks a declaration of her 1/3rd right over the plaint schedule properties. As per Article 58 read with Section 3 of the Limitation Act, 1963, a suit seeking such declaratory relief must be filed within three years from the date when the right to sue first accrues. In the absence of a specific plea and proof that the plaintiff came to know

of the alleged undue influence at a later point of time, it can be held that the suit is barred by limitation. Therefore, from the above discussion and analysis, this Court is of the view that the suit is barred by limitation. Hence additional issue No.1 is found against the plaintiff.

16. **Additional Issue No.II -** One of the contentions raised by the defendant is that the suit has not been properly valued and that sufficient court fee has not been paid. The principal relief sought in the plaint is a declaration of the plaintiff's 1/3rd right over plaint schedule items Nos. 1 to 3, along with a consequential relief of partition and separate possession of the said 1/3rd share by metes and bounds, and a permanent prohibitory injunction. On a perusal of the plaint, it is seen that court fee has been paid in respect of the relief of declaration under Section 25(b) of the Act, for permanent prohibitory injunction under Section 27(c), and for fixation of boundary after partition under Section 50. However, insofar as the relief of partition and separate possession of plaint schedule items Nos. 1 to 3 is concerned, the same attracts court fee under Section 37 of the Act. No court fee under the said provision has been paid by the plaintiff.

17. Since the relief of partition is a substantive and independent relief, the plaintiff is bound to pay court fee under

Section 37, either under sub-section (1) or (2), depending on whether the plaintiff is in joint possession or not. The omission to pay court fee under Section 37 renders the suit undervalued . The defendant has contended in the written statement that the suit is undervalued and that sufficient court fee has not been paid. However, the said contention is vague and bereft of material particulars, as no specific plea has been raised indicating in what manner the valuation is incorrect or what is the proper court fee payable. The plaint reveals that court fee has been paid for the relief of declaration under Section 25(b), for permanent prohibitory injunction under Section 27(c), and for fixation of boundary under Section 50 of the Kerala Court Fees and Suits Valuation Act, 1959. It is true that the relief of partition and separate possession attracts court fee under Section 37 of the Act, and no separate court fee appears to have been paid under that provision. However, such a plea regarding undervaluation and insufficiency of court fee has not been specifically raised with necessary particulars. Therefore, the said plea cannot be sustained at this stage. Hence additional issue No.II is found in favour of the plaintiff.

18. **Issue No.I :-** The case of the plaintiff is that she is entitled to a 1/3rd share over the plaint schedule properties and that Exts. A1 to A3 are not binding on her, as they were allegedly

obtained by the first defendant by exercising undue influence over the parents. Based on this contention, the plaintiff seeks a declaration of 1/3 share over plaint schedule properties and consequential partition. To prove the case of the plaintiff, the plaintiff was examined as PW1 and Ext A1 to A5 were marked. She deposed in tune with the averments in the plaint. Certified copy of Settlement deed No. 770/1989 was marked as Ext.A1. Certified copy of Sale deed No. 657/91 was marked as Ext.A2. Certified copy of Sale deed No. 54/1992 was marked as Ext.A3. Copy of caveat is marked as Ext.A4. Copy of legal notice dated 16/10/2021 was marked as Ext.A5.

19. The learned counsel for the plaintiff argued before the Court that Exts. A2 and A3 sale deeds were executed without adequate consideration, which itself is indicative of undue influence. During the cross-examination of DW1, when a specific question was put to him with respect to Ext. B3, which is the original sale deed corresponding to Ext. A3, he deposed that the property was transferred by his father to him for a consideration of Rs. 35,000/-. He further stated that although the consideration appears to be low, the same was fixed taking into account the amounts he had earlier paid to his father, and therefore, the consideration under Ext. B3 was shown as Rs. 35,000/-. The relevant portion of his deposition is extracted as follows:"……ഞാൻ

പിതാവിനു പലപ്രാവശ്യമായി 50 ലക്ഷം രൂപ കൊടുത്തു ഈ വസ്തു വാങ്ങിക്കാൻ....." " ..... ടി ആധാരത്തിൽ ചെങ്ങന്നൂരിലെ ഹൃദയഭാഗത്തുള്ള 50 സെന്റ് വസ്തു വീട് ഉൾപ്പെടെ 35,000/- രൂപ എന്നാണ് വച്ചിരിക്കുന്നത് ശരിയാണോ എന്ന് ചോദിച്ചാൽ ശരിയാണ്. ഈ പറയുന്ന വസ്തുവിൽ വീട് ഉണ്ടെന്നു പറയുന്ന വസ്തുത ഇതിൽ രേഖപ്പെടുത്തിയിട്ടില്ല ഒരു കാലത്തും അവിടെ മുപ്പത്തിഅയ്യായിരം രൂപയ്ക്ക് വസ്തു കിട്ടില്ല എന്ന് എനിക്ക് ബോധ്യമുണ്ട്. ആ രണ്ടു കാര്യവും വസ്തുതയും ശരിയല്ല എന്ന് പറഞ്ഞാൽ താങ്കൾക്കു നിഷേധിക്കാൻ സാധിക്കുമോ എന്ന് ചോദിച്ചാൽ. എനിക്ക് പിതാവ് എഴുതി തന്നതാണ്. ഇപ്രകാരം ഒരു ആധാരം പിതാവിനെ കബളിപ്പിച്ചു എഴുതി വാങ്ങിയതാണെന്നു പറഞ്ഞാൽ. ശരിയല്ല....." "....പിതാവാണ് എനിക്ക് വസ്തു എഴുതി തന്നത് എന്റെ കയ്യിൽ നിന്ന് പലപ്രാവശ്യമായി വാങ്ങിച്ച പണം ഉപയോഗിച്ചാണ്" From his testimony, it is clear that the consideration cannot be said to be inadequate in the factual context of the case. The mere fact that the consideration amount is low does not, by itself, lead to the conclusion that the transaction was vitiated by undue influence. This is particularly so when the executant has explained that prior monetary transactions were taken into account while fixing the consideration. Further, the sale deeds in question were executed in the years 1991 and 1992, and the present suit has been filed after a considerable lapse of time. In the absence of any convincing evidence the plea of undue influence cannot be readily inferred

solely on the ground of alleged inadequacy of consideration.

20. Further, when a specific suggestion was made by the learned counsel for the plaintiff while cross examination of DW1 with respect to the deed executed by the mother, he deposed as follows:- "…….മാതാവാണ് ആദ്യം വസ്തു എഴുതി തന്നത്. അത് ധനനിശ്ചയധാരം ആണ്. അങ്ങനെ ധനനിശ്ചയം ആയി എഴുതി തന്നത് പോരാ എന്ന് എനിക്ക് തോന്നിയത് കൊണ്ട് ഞാൻ പിതാവിനെ കൊണ്ട് കബളിപ്പിച്ചു വിലയാധാരം എഴുതിയതാണ് എന്ന് പറഞ്ഞാൽ നിഷേധിക്കുന്നു…..” From the above suggestion that, after the execution of the settlement deed by the mother in favour of DW1, the defendant considered it insufficient and, on that basis, is alleged to have exercised undue influence over the father to execute further deeds in his favour, it can be reasonably inferred that the plaintiff has no consistent case that the deed executed by the mother in favour of the defendant was vitiated by undue influence. Furthermore, DW1 has categorically denied the suggestion that the document was obtained by undue influence and has further denied that there was any expressed intention on the part of the parents to give any property to the plaintiff. Therefore, the evidence of DW1 probabilizes the case of the defendant that the transactions were voluntary and not the result of any undue influence.

21. Furthermore, when a specific question was put to

PW1 with respect to the relief claimed and the amount allegedly given by the first defendant to the plaintiff, she deposed as follows: "..... 10 സെന്റ് വസ്തു വേണമെന്ന് പറഞ്ഞാണ് കേസ് കൊടുത്തിരിക്കുന്നത്. ഈ കേസിലെ മൊത്തം വസ്തുവിന്റെ മൂന്നിലൊന്ന് അവകാശം വേണമെന്നാണോ അതോ 10 സെന്റ് വേണമെന്നാണോ എന്ന് ചോദിച്ചാൽ 10 സെന്റ് വേണമെന്നാണ് എന്റെ ആവശ്യം....." She further deposed while cross examination that :- "....എന്റെ വിവാഹ സമയത്ത് 1-ാം പ്രതി ഗൾഫിലാണ്. വിവാഹത്തിന് വന്നിരുന്നില്ല. അന്ന് 5 ലക്ഷം രൂപ തന്നു എന്ന് പറഞ്ഞാൽ ഞാൻ നിഷേധിക്കുന്നു, എനിക്ക് 1 ലക്ഷം രൂപയാണ് തന്നത്....." ".....എന്റെ രണ്ടാമത്തെ വിവാഹം 2004 ഫെബ്രുവരി മാസം ആയിരുന്നു. അന്ന് വിവാഹ സമയം സഹോദരൻ 2 ലക്ഷം രൂപ തന്നു എന്ന് പറഞ്ഞാൽ ഞങ്ങൾ ആവശ്യപ്പെട്ടല്ല തന്നത്....." ".....6/6/2014 തീയതിയിൽ എന്റെ സഹോദരൻ എസ്ബിഐയുടെ. 389012 ചെക്ക് പ്രകാരം എനിക്ക് ഒരു 50000 രൂപ നൽകിയിട്ടുണ്ടെന്ന് പറഞ്ഞാൽ ശരിയാണ്. ഞാൻ ആവശ്യപ്പെട്ടിട്ടല്ല തന്നത്. 21/ 12/ 2020 തീയതിയിൽ SBI ചെങ്ങന്നൂരിലെ 12391 നമ്പർ ചെക്ക് പ്രകാരം 10 ലക്ഷം രൂപ തന്നു എന്ന് പറഞ്ഞാൽ ശരിയാണ്, അത് തന്നതാണ് ഈ കേസ് കൊടുക്കാൻ എന്നെ പ്രേരിപ്പിച്ചത്. 10 സെന്റ് സ്ഥലം തരാമെന്ന് പറഞ്ഞു എന്റെ മകളെ ബ്രെയിൻ വാഷ് ചെയ്ത് 10 ലക്ഷം രൂപ കൊടുത്തു....".

22. From the above deposition of PW1 during cross-examination, it probabilizes the case of the defendant that certain amounts had, in fact, been given by the first defendant to the

plaintiff at different points of time. PW1 has admitted receipt of amounts such as ₹50,000/- and ₹10,00,000/-, and has also not completely denied receipt of monetary assistance at the time of her marriages, though she disputed the exact quantum. These admissions lend credence to the contention of the defendant that financial assistance was extended to the plaintiff, thereby negating the allegation that she was completely deprived of any benefit. Further, a material inconsistency is evident in the testimony of PW1 with respect to the relief claimed. While the suit is one for declaration of 1/3rd right over the plaint schedule properties along with consequential relief of partition and separate possession, PW1, during cross-examination, has categorically stated that her claim is limited to 10 cents of land. This deviation strikes at the root of the plaintiff's case, as it reflects uncertainty and inconsistency regarding the nature and extent of the relief sought. Such inconsistency weakens the credibility of the plaintiff's case and supports the defence version that the claim is an afterthought, lacking a clear and definite legal basis.

23. One of the contentions raised by the learned counsel for the defendant is that Exts. A1 to A3 deeds were executed in the years 1989, 1991, and 1992, and that the present suit, filed at this belated stage, is clearly barred by limitation and is only an afterthought intended to cause inconvenience and disturbance to

the first defendant. Further, when a specific question was put to PW1 with respect to the allegation of undue influence over the parents, she deposed as follows: "…….എന്റെ പിതാവിന് അവകാശപ്പെട്ട എന്ന് പറയുന്ന വസ്തുക്കൾ പിതാവ് മരിക്കുന്നതിന് മുൻപ് പിതാവ് ഒന്നാം പ്രതിക്ക് എഴുതിക്കൊടുത്തു എന്ന് പറഞ്ഞാൽ ശരിയാണ്, ആയതിൽ പിതാവ് ഒരുപാട് ദുഖിച്ചിട്ടുണ്ട്. പിതാവ് അങ്ങനെ എഴുതിക്കൊടുത്തത് 1991-ലാണ്. അതിന് ശേഷം 17 വർഷങ്ങൾക്ക് ശേഷമാണ് പിതാവ് മരണപ്പെട്ടതെന്ന് പറഞ്ഞാൽ ശരിയാണ്. അങ്ങനെ 17 വർഷം ബുദ്ധിമുട്ട് ഇല്ലായിരുന്നുവെങ്കിൽ പിതാവ് ഏതെങ്കിലും അധികാര സ്ഥാപനങ്ങളിൽ പരാതി കൊടുത്തതായി അറിയാമോ എന്ന് ചോദിച്ചാൽ പരാതി കൊടുത്തിട്ടില്ല. പിതാവ് മകന് എഴുതിക്കൊടുത്ത ആധാരങ്ങൾ ഏതെങ്കിലും സെറ്റ് എസൈഡ് ചെയ്യുന്നതോ എന്തെങ്കിലും നടപടികൾ പിതാവ് സ്വീകരിച്ചിട്ടില്ല എന്ന് പറഞ്ഞാൽ. എന്റെ പിതാവ് ഒന്നാം പ്രതിക്ക് കത്തെഴുതിയിരുന്നു ഒന്നാം പ്രതി അത് തിരിച്ചുതരാമെന്ന് പറഞ്ഞ് മറുപടി കത്തെഴുതിയിരുന്നു. അങ്ങനെയുള്ള കത്തുകളൊന്നും ഞാൻ കോടതിയിൽ ഹാജരാക്കിയിട്ടില്ല. ഞാൻ അതൊന്നും സൂക്ഷിച്ചുവെച്ചിട്ടില്ല…."

24. The above deposition of PW1 further strengthens the contention of the defendant that there was no undue influence exercised upon the father of the first defendant. PW1 has clearly admitted during cross examination that the properties were transferred by her father in favour of the first defendant as early as in 1991, and that the father lived for about 17 years thereafter.

Significantly, she has also admitted that during this long period, the father had not initiated any legal proceedings before any competent authority to challenge or set aside the said documents. This conduct assumes importance, as it indicates that the executant himself had accepted the validity of the transactions and had not treated them as vitiated by undue influence. Further, although PW1 made a vague statement that the father was unhappy, she admitted that no documentary evidence, such as the alleged letters, has been produced before the Court. Such unsubstantiated statements cannot be relied upon to establish undue influence. Therefore, this evidence probabilizes the case of the defendant that the transactions under Exts. A1 to A3 were voluntarily executed and were never questioned during the lifetime of the executant, and that the present suit, instituted after several decades, is not only barred by limitation but also lacks bona fides.

25. The learned counsel for the defendant argued before the Court that the plaint schedule Item No. 1 property, along with a certain extent of property owned by the mother, was transferred to the first defendant by virtue of two deeds executed by the mother of the plaintiff and the first defendant. Therefore, it is contended that the averment of the plaintiff regarding undue influence exercised over the mother cannot be sustained in light of the testimony of PW1. In support of this contention, the defendant

relied upon Ext. B1 and Ext. B4. Ext. B1 is the original of Settlement Deed No. 770/1989, and Ext. B4 is Settlement Deed No. 731/1989, both executed by the mother of the first defendant in favour of the first defendant. In order to substantiate the same, when a specific question was put to PW1 during cross-examination, she deposed as follows: "……..എന്റെ അമ്മയ്ക്ക് അബദ്ധം പറ്റിയതാണെന്ന് അമ്മ എന്നോട് പറഞ്ഞു, എന്റെ സിസ്റ്ററിനും അതറിയാം. രജിസ്റ്റർ ഓഫീസിൽ ചെന്നപ്പോഴാണ് മനസ്സിലായത്. അങ്ങനെ എന്റെ അമ്മയെ ഒരു പ്രാവശ്യം. ഒരുക്കികൊട്ടിക്കൊണ്ട് പോയതാണ്. അങ്ങനെ അമ്മ എന്റെ സഹോദരിയോടു പറഞ്ഞു, മകളെ എനിക്ക് അബദ്ധം പറ്റിയതാണെന്ന്. അങ്ങനെ ഒന്നിലധികം പ്രാവശ്യം അബദ്ധം പറ്റിയ വിവരം പറഞ്ഞു എന്ന് ചോദിച്ചാൽ മരിക്കുന്നത് വരെ എന്റെ അമ്മയുടെ കണ്ണുനീർ ഉണ്ടായിരുന്നു. അന്യായപ്പട്ടിക 1 വസ്തു അമ്മ 2 ആധാര പ്രകാരമാണ് ഒന്നാം പ്രതിക്ക് എഴുതിക്കൊടുത്തത് എന്ന് പറഞ്ഞാൽ. എനിക്കതിനെക്കുറിച്ച് അറിയില്ല. അമ്മയെ ഒരിക്കൽ കൊണ്ടുപോയി കബളിപ്പിച്ച് ആധാരം എഴുതിയതാണെങ്കിൽ അമ്മ വീണ്ടും ആ മകനു തന്നെ ശേഷിക്കുന്ന വസ്തു ആധാരം എഴുതിക്കൊടുക്കില്ല എന്ന് പറഞ്ഞാൽ അതിനെക്കുറിച്ച് എനിക്കറിയില്ല."

26. From the above deposition of PW1 during cross examination, it can be concluded that the allegation of undue influence over the mother is not supported by any reliable or cogent evidence, as the statements made are vague and unsubstantiated. Furthermore, from Ext.B1 and B4 it is proved

that the mother of the 1st defendant excecuted two documents in favour of the 1st defendant, which renders the plea of undue influence inherently improbable, as repeated execution indicates a voluntary and conscious act. Thus, the evidence on record probabilizes the case of the defendant that the transactions were voluntary and that the present claim is belated and unsustainable in law.

27. One of the independent witnesses was examined as PW2 on the side of the plaintiff. PW2 deposed that he had knowledge that the father of the plaintiff had decided to give 10 cents of property to the plaintiff. The relevant portion of his deposition is extracted as follows:- “ഈ വിവാഹത്തിന് മുമ്പ് വാദിയുടെ പിതാവ് പലതവണ എന്നെ സമീപിക്കുകയും വസ്തു എല്ലാം മകന് എഴുതി കൊടുത്തു എന്നും എനിക്ക് മകൾക്ക് കൊടുക്കുവാൻ ഒന്നും ഇല്ല എന്നും എന്നോട് പറയുകയുണ്ടായി എന്നാൽ മകളുടെ അവസ്ഥ വളരെ ദയനീയമാണ്, ആയതുകൊണ്ട് ഞങ്ങളുടെ കൂടിയാലോചനയുടെ ഫലമായി അവിടെ 10 സെന്റ് വസ്തു കൊടുക്കാമെന്ന് ഒരു ധാരണയിൽ എത്തുകയും അങ്ങനെ 10 സെന്റ് വസ്തു എന്റെയും കൂടി സാന്നിധ്യത്തിലാണ് വാദിയുടെ പിതാവ് സർവേയറെ വിളിച്ചു കൊണ്ടുവന്ന അതിർത്തിയെ നിശ്ചയിച്ചു കല്ലിട്ടത്.എന്നോട് വാദിയുടെ പിതാവ് പറഞ്ഞു ഞാൻ മകനെ പറഞ്ഞ് സമ്മതിപ്പിച്ചു മകൻ ഗൾഫിൽ നിന്ന് വരുമ്പോൾ ഈ 10 സെന്റ് വസ്തു ക്രയവിക്രയം നടത്തിക്കൊടുക്കാമെന്ന് എന്നോട്

പറഞ്ഞിട്ടുള്ളതാണ്……..” “……..പലരും ഇടപെട്ട് വാദിയുടെ സുഹൃത്തുക്കളും ബന്ധുക്കളും ഇടപെട്ട് ഈ 10 സെന്റ് വസ്തു വാദിക്ക് കൊടുക്കണമെന്ന് എതിർ കക്ഷിയോട് പല തവണ ആവശ്യപ്പെട്ടു. ഇത് നിരസിച്ചപ്പോഴാണ് വാദി കേസ് നൽകിയത്.."

28. From this testimony of PW2, it is clear that the father had the intention to give 10 cents of property to the plaintiff. However, during cross-examination, when a specific question was put to PW2 as to whether the father had property at the time when he decided to give 10 cents to the plaintiff, he deposed that at that time the father had no property to transfer. Moreover, the properties had already been transferred in the years 1991 and 1992, and no steps were taken by the father to set aside those deeds. Furthermore, from the deposition of PW2 itself, it is evident that the father had transferred the property to the defendant voluntarily, but later, considering the situation of the plaintiff, the father intended to give 10 cents to the plaintiff. This probabilizes the case of the defendant that the father had voluntarily effected the transfer in favour of the defendant.

29. Moreover, when a specific question was asked during the cross-examination of PW2 regarding the testimony that the measurement was conducted by the father for giving 10 cents of property to the plaintiff, he deposed as follows: “സർവേയറെ വിളിച്ച്

കല്ലിട്ടു എന്ന് പറയുന്നത് ഏത് വസ്തുവിൽ ആയിരുന്നു. അവിടെ ഒരു playschool ഉണ്ടായിരുന്നു, അതിന്റെ അടുത്ത വസ്തുവാണ് അന്യായപ്പടിക ഒന്നക്കം ആണോ രണ്ടക്കം ആണോ എന്നെനിക്ക് അറിയില്ല." From his deposition, it is not clear as to which property he is referring. From the deposition of PW2, it can be inferred that although there was an indication of intention on the part of the father to give 10 cents of property to the plaintiff, such intention was neither definite nor capable of being acted upon, as PW2 himself admitted during cross-examination that the father had no property at the relevant time. Further, the witness was unable to clearly identify the property allegedly measured for this purpose, thereby creating ambiguity regarding the subject matter. On the contrary, it lends support to the case of the defendant that the earlier transfers were effected voluntarily, and that any subsequent intention expressed by the father was only his desire to support her daughter but insufficient to confer any legal right on the plaintiff.

30. The burden of proving undue influence squarely lies upon the plaintiff. Mere allegations are not sufficient; the plaintiff must specifically plead the circumstances constituting undue influence and adduce cogent and convincing evidence to substantiate the same. In the present case, a careful perusal of the pleadings shows that the allegations of undue influence are vague,

general, and lacking in material particulars. There is no clear averment as to the nature of the influence, the manner in which it was exercised, or the circumstances under which the executants were allegedly compelled to execute Exts. A1 to A3. The plaintiff has alleged that Exts. A1 to A3 were obtained by the first defendant by exercising undue influence over the parents; however, the said plea is not supported by proper pleadings as required under Order VI Rule 4 of the Code of Civil Procedure, 1908. It is a settled principle that in cases involving allegations of undue influence, the party must specifically plead all material particulars, including the nature of the relationship, the circumstances under which the alleged influence was exercised, the manner in which the executants were dominated, and how the transactions became unconscionable. In the present case, the pleadings of the plaintiff are vague and general, lacking any specific details as to when, where, and in what manner the first defendant exercised such influence over the parents.

31. Further, the evidence adduced by the plaintiff is wholly insufficient to prove that the 1st defendant was in a position to dominate the will of the parents and the trasanction appear on the face of it or on evidence adduced to be unconscionable. Except for the testimony of PW1, no independent or reliable evidence has been produced to prove that the first defendant was in a position

to dominate the will of the parents so as to execute Exts. A1 to A3 documents in favour of the first defendant. In such circumstances, Exts. A1 to A3, being registered documents, carry a presumption of due execution and validity. The plaintiff has failed to rebut this presumption by acceptable evidence. Therefore, the contention that the said documents are void ab initio cannot be accepted. On the contrary, even as per the plaintiff's own case, the allegation of undue influence would render the documents voidable, and not void. In the absence of proper pleadings and proof of undue influence, the plaintiff has failed to establish any legal ground to invalidate Exts. A1 to A3. Consequently, the plaint schedule properties is now in absolute ownership and possession of the 1st defendant therefore the claim for declaration of 1/3rd right and for partition cannot be sustained. Hence issue No. I is found against the plaintiff.

32. **Issue Nos. II and III:-** In the present case, the plaintiff claims a 1/3rd share over the plaint schedule properties and seeks partition and permanent prohibitory injunction on that basis. However, the plaintiff has failed to establish her right over the properties. As already discussed, Exts. A1 to A3, under which the properties stand in the name of the first defendant, have not been successfully challenged by the plaintiff. The contention that the said documents are void ab initio cannot be accepted, as the

allegation of undue influence, even if proved, would render the documents only voidable. Moreover, the plaintiff has neither properly pleaded nor proved the essential ingredients of undue influence in accordance with Order VI Rule 4 of the Code of Civil Procedure, 1908. The pleadings are vague and lack material particulars, and no convincing evidence has been adduced to substantiate the same. In such circumstances, the registered documents in favour of the first defendant carry a presumption of validity, which has not been rebutted by the plaintiff. Consequently, the title over the plaint schedule properties is held to be vest with the first defendant by virtue of Exts. A1 to A3/Ext.B1 to B3. Once the plaintiff fails to establish any subsisting right or share in the properties, the very foundation of the claim for partition falls to the ground. It is well settled that a decree for partition can be granted only when the plaintiff proves co-ownership or joint title over the properties. In the absence of such proof, the relief of partition cannot be granted. Hence issue No. II is found against the plaintiff. Further, the relief of permanent prohibitory injunction is only consequential to the establishment of a legal right. When the plaintiff has failed to prove her title or possession or any enforceable right over the plaint schedule properties, she is not entitled to the discretionary relief of injunction as well. Therefore, in view of the failure of the plaintiff

to establish her right over the plaint schedule properties, she is not entitled to a decree for partition or for permanent prohibitory injunction as sought for. Hence issue No. III is also found against the plaintiff.

33. **Issue No.IV:- In result,** the suit dismissed with cost.

(Dictated to the Confidential Assistant, transcribed by her, corrected by me and pronounced in open court this the 31st day of March, 2026)

Sd/-
AMALA LAWRENCE
MUNSIFF

APPENDIX:

Witness for the Plaintiff:

PW1	27.01.2026	Jessy P Abraham
PW2	05.02.2026	Dr.G.Samuel

Exhibits for the Plaintiff:

A1	03.04.1989	Certified Copy of Settlement Deed No.770/1989 of SRO, Chengannur
A2	20.03.1991	Certified Copy of Sale Deed No.657/1991 of SRO, Chengannur
A3	08.01.1992	Cerfied Copy of Sale Deed No 54/1992 of SRO, Chengannur
A4	23.04.2021	Copy of Coveat
A5	16.10.2021	Copy of Advocate Notice

Witness for the Defendants:

DW1	02.03.2026	P.A.Abraham

Exhibits for the Defendants:

B1	03.04.1989	Settlement Deed No. 770/1989 of SRO, Chengannur ((Proved by PW1)
B2	20.03.1991	Sale Deed No. 657/1991 of SRO, Chengannur ((Proved by PW1)
B3	08.01.1992	Sale Deed No. 54/1992 of SRO, Chengannur ((Proved by PW1)
B4	28.03.1989	Settlement Deed No. 731/1989 of SRO, Chengannur
B5	05.03.2025	Tax Receipt No. KL04050201313/2025 issued Village Office, Chengannur
B6	05.03.2025	Tax Receipt No. KL04050201314/2025 issued Village Office, Chengannur

Id/-
MUNSIFF