

IN THE COURT OF SUB JUDGE, KOCHI

Present:

Smt. Rejani Thankappan, Sub Judge, Kochi

Thursday, the 19th day of December, 2024/ 28th Margaseersha, 1946.

O.S. No. 48/2022

Plaintiff:-

Leo Pinheiro, aged 65 years, S/o Late Gregory Pinjera alias Gregory Pinheiro, Residing at Kummapilly House, Perumalpady, Elamkunnappuzha, Kochi-682 503.

By Advs. A.Balagopalan, A.Rajagopalan, M.N.Manmadan,
M.S.Sreejith & Shimon Kuruvila Thomas

Defendants:-

1. Milton Pinheiro, aged 57 years, S/o Late Gregory Pinjera alias Gregory Pinheiro, Residing at Plot No. 174/a, Shanthi Nagar, Meerpet, Behind Ramakrishna School, Mallapur, Nacharam P.O., Uppal, Telangana -500076.
2. Jason Pinheiro, aged 54 years, S/o Late Gregory Pinjera alias Gregory Pinheiro, Residing at Kummapilly House, East Nada, Elamkunnappuzha 682503.
3. Sheeba Pinheiro, aged 54 years, W/o Late Demancy Pinheiro, Residing at Kummapilly House, East Nada, Elamkunnappuzha 682503.
4. Deon Garry Pinheiro, aged 28 years, S/o Late Demancy Pinheiro, Residing at Kummapilly House, East Nada, Elamkunnappuzha 682503.
5. Stan Boyze Pinheiro, aged 25 years, S/o Late Demancy Pinheiro, Residing at Kummapilly House, East Nada, Elamkunnappuzha 682503.

D1 By Advs. Joseph Edakatt, Smitha R & Meera Lalan (Exparte)

D2 to D5 by Advs. K.M.Madhu, Vishnuja Ajayan (Exparte)

This suit filed under Section 26 read with Order VII Rule 1 of Civil Procedure Code, 1908.

This suit having come up for hearing before me on 13.12.2024 and the court on 19.12.2024 delivered the following :-

JUDGMENT

The suit is for partition.

2. The suit is filed by the plaintiff to get decree for partition of the plaint schedule properties and the building situated in item No.3 property into 4 equal shares and to allot separate possession of one share to the plaintiff.

3. The case of the plaintiff is as follows:-

The plaintiff and defendant 1 and 2 are the children of Late Gregory Pinjera alias Gregory Pinheiro and Late Karmali Pinheiro. They had two other brothers namely Demancy Pinheiro and Antony Nixon Pinheiro. Demancy Pinheiro died on 25.05.2005 and his wife and children are defendants 3 to 5 in this case. Antony Dixon Pinheiro was a bachelor and he died on 26.09.2018. The father of the plaintiff and the defendants 1 and 2 Late Gregory Pinjera alias Gregory Pinheiro obtained 9 cents equivalent to 3.64 ares comprised in Survey No.140/1 of Elamkunnappuzha Village as per Sale Deed No.307 of 1973 of the SRO Njarakkal. Similarly, he obtained 8 cents of property equivalent to 3.24 ares comprised in Survey No.182 of Elamkunnappuzha Village as per Sale Deed No.248 of 1981 of the SRO, Njarakkal. He also obtained 926 Sq Links equivalent to 37 Sq meter of property comprised in Survey No.290/2 of Elamkunnappuzha Village and the shop room situated therein bearing Elamkunnappuzha Panchayath Door No.12/265 and 258 as per the Sale Deed No.548 of 1985 of the SRO,

Njarakkal. Thereafter, the intervening wall between the two rooms which bears present Elamkunnappuzha Panchayath Door No.4/550. The mother Karmali Pinheiro obtained 22 cents of Nilam equivalent to 8.90 ares comprised in Sy No.552/2 of Elamkunnappuzha Village as per Sale Deed No.1282 of 1975 of the SRO, Njarakkal. Late Karmali obtained three items of property as per Sale Deed No.1122 of 1963 of the SRO Njarakkal. The first item is having an extent of 5 cents comprised in Sy No.547/2, second item is having an extent of 13 cents comprised in Sy No.547/3 and the third item is having an extent of 33 cents comprised in Sy No.546/2 of Elamkunnappuzha Village. Out the said three items, 10 cents has been sold to one Mr.Joseph Puthussery and 5 cents has been sold to Mr.Aripambil Abros by Karmali Pinheiro. Thereafter the property has been resurveyed and the remaining property is having an extent of 35.71 cents(14.45 ares) comprised in re survey No.260/6. The said properties are described as item Nos.1 to 5 in this suit. The father of the plaintiff died intestate on 19.05.2004 and the mother Karmali died intestate on 26.04.2017. On the death of both the parties as intestate their share in the plaint schedule properties devolved upon their legal heirs namely plaintiff and defendants. The second defendant is doing business in the building described in item No.3 of Plaint schedule. The plaintiff and defendants are co-owners in possession and enjoyment of the plaint schedule properties. The plaintiff does not want to continue co-ownership over the plaint

schedule properties. Therefore, the plaintiff informed the defendants to have an amicable partition of the plaint schedule properties. But the defendants are not amenable for the same. Hence the suit.

4. 1st defendant filed written statement with following contentions:-

The suit is not maintainable either in law or on facts. The plaint schedule item No.1 and 2 items are lying jointly. The plaintiff is residing separately from the Tharavadu house situated in Item No.1 and 2 from 1990 onwards at Perumal Petta. The 1st defendant is living separately at Telangana from 1990. The 3rd and 4th defendant are wife and children of their old brother Demancy pin heiro and they are also living separately near the Tharavadu house from 1997 onwards. The 2nd defendant along with his family is residing in the Tharavadu house situated in Item No.1 and 2 properties along with parents and brother. He had worked at the stationery store belongs to their father situated in Item No.3, and after the death of their father the 2nd defendant is running the stationery store. The 2nd defendant is in possession of plaint schedule item No.1, 2 and 3 properties. Admittedly, regarding plaint schedule property the plaintiffs and defendants are the co-owners. The plaintiff had not approached him for partition of the plaint schedule property. But the 2nd defendant had approached the plaintiff in several times for partition of the plaint schedule property since he is in possession of plaint schedule item No.1 to 3 properties. The 1st defendant is willing to allot his share in Item No.1 to 4

proportionately to others who are willing to relinquish their share in Item No.5 to him. The parents and other brothers of the 1st defendant had told to him that the property mentioned in Item No.5 will be given to him upon believing the words of them he had spent money for legal battle with respect to disputed pathway towards the property.

5. Considering the contentions of both the parties following issues were raised for consideration:-

1. Whether the plaint schedule property is partible or not?
2. If so, what is the share of the plaintiffs:
3. What is the order as to Reliefs and costs?

6. Plaintiff filed proof affidavit and is examined as PW1. Ext.A1 to A9 marked. This case was included in the published list for taking evidence on 13.12.2024. The defendant absent on that day and there was no representation. Hence, defendant called absent and set exparte.

7. Heard both sides.

8. Plaintiff filed proof affidavit and examined as PW1. From the unrebutted evidence of PW1 and from Exhibits A1 to A9 the plaint averments stands proved. Hence, the plaintiff is entitled to get a decree as prayed for.

In the result,

The suit is decreed and the preliminary decree is passed as follows:-

- 1. The plaint schedule property is partitioned by metes and bounds into 4 equal shares.**
- 2. The plaintiff is entitled to get 1/4th share over the plaint schedule item No.1 to 5 and the building situated in item No.3.**
- 3. The first and second defendant is entitled to get 1/4th share each over plaint schedule item No.1 to 5 properties and the building situated in Item No.3.**
- 4. Defendants 3 to 5 jointly entitled to get 1/4th share over the plaint schedule property.**
- 5. Any of the parties can apply for final decree on payment of requisite court fee.**
- 5. Cost of the suit shall come out of the estate.**

Dictated to the Confidential Assistant, typed by her corrected by me and pronounced in open court on this the 19th day of December, 2024.

Sd/-
REJANI THANKAPPAN,
SUB JUDGE

APPENDIX:-

Plaintiff's Exbts:-

- | | |
|----|---|
| A1 | Certified copy of sale deed No. 307 of 1973 SRO Njarakkal. |
| A2 | Certified copy of sale deed No. 248 of 1981 SRO Njarakkal. |
| A3 | Certified copy of sale deed No. 548 of 1985 SRO Njarakkal. |
| A4 | Certified copy of sale deed No.1282 of 1975 SRO Njarakkal. |
| A5 | Certified copy of sale deed No. 1122 of 1963 SRO Njarakkal. |

A6 27.05.2004 Death Certificate of Gregory Pinjera alias Gregory Pinheiro.

A7 11.05.2017 Death certificate of Karmali Piheiro.

A8 08.02.2019 Death Certificate of Antony Nixon Pinheiro.

A9 06.09.2019 Relationship Certificate.

Defendant's Exbts:- Nil

Court Exbts:- Nil

Plaintiff's witness:-

PW1 13.12.2024 Leo Pinheiro

Defendant's witness:- Nil

Court witness:- Nil

Typed by:vkg

Comp. by:sks

Sd/-
SUB JUDGE
(By Order)

True copy

Sheristadar

Judgment in
O.S. No.48/2022
Dated: 19.12.2024