

IN THE COURT OF SUB JUDGE, KOCHI

Present :

Smt. Rejani Thankappan, Sub Judge, Kochi

Wednesday, the 17th day of September, 2025/26th Bhadaram, 1947

O.S. No. 44/2024

Plaintiff :-

Shali Joseph, aged 57 years, W/o. P.J Joseph, Palliparambil House, Veliyathara, Narayanan Road, South Palluruthy, Ernakulam-682006.

By Advs. Kabil Chandran T & Anjali R

Defendants :-

1. Rosy Joseph, aged 76 years, W/o. Late K.V Joseph, Kaithaveli House, Veliyathara, Narayanan Road, South Palluruthy, Ernakulam -682006.
2. K.J George, aged 59 years, S/o. Late K.V Joseph, Kaithaveli House, South Kumbalangi, Ernakulam-682007.
3. Shiny David, aged 55 years, W/o. David P.P, Puthenveetil House, Maradu Village, Nettoor P.O., Ernakulam-682040.
4. Mary Varghese @ Shaja, aged 53 years, W/o. Varghese @ Titus, Thattassery House, now residing at Puthenveetil House, Maradu Village, Nettoor P.O., Ernakulam-682040.

Exparte

This suit filed under Order VII Rule I read with Section 26 of the Code of Civil Procedure.

This suit having come up for hearing before me on 12.09.2025 and the court on 17.09.2025 delivered the following :

J U D G M E N T

The suit is for partition and permanent prohibitory injunction.

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

The plaintiff and the defendants 2 to 4 are the children of Late K.V. Joseph and the 1st defendant. Originally, Late K.V. Joseph was

the owner in possession of 5.265 Ares of property situated in Survey No.915/23 of Palluruthy Village obtained to as per the registered sale deed No.1435/1978 of Kochi SRO. Later, an extent of 0.73 Ares of property had been acquired by the Corporation of Kochi for the purpose of widening the Veliyathara Narayanan Road and accordingly, the total property held by Late K.V.Joseph had been reduced to an extent of 4.53 Ares. There are two residential buildings situated in the above property, one is the Tharavadu house having building No.CC 20/2429 of Cochin Corporation and the other one is having building No. CC 20/2429A of Cochin Corporation, in which the plaintiff and her family are residing. Therefore, the property having an extent of 4.53 Ares situated in Sy No.915/23 of Palluruthy Village along with the residential buildings numbered as CC 20/2429 and CC 20/2429A of Cochin Corporation is more particularly described as plaint schedule property. The plaintiff and the defendants are Christian by religion and the aforesaid Joseph too, was a Christian by religion. Later on 25.06.2022 the father K.V. Joseph died intestate. On the death of K.V. Joseph on 25.06.2022, the plaint schedule property with all interests, title and rights therein have been devolved upon the plaintiff and the defendants with 1st defendant being the widow, acquiring 1/3rd share

and the plaintiff and the defendants 2 to 4, acquiring $1/4$ sharers each out of the remaining $2/3^{\text{rd}}$ share, as per Indian Succession Act. The plaintiff along with her family are residing in the residential house numbered as CC 20/2429A of Cochin Corporation, situated in the plaint schedule property. Late K.V. Joseph and the 1^{st} defendant were residing in the Tharavadu house situated in the plaint schedule property. After the death of aforesaid K.V. Joseph, the 1^{st} defendant alone is residing in the Tharavadu house. The plaintiff and her husband had already spent substantial amounts in the residential house for renovating the same. The said residential house is situated in a property having an extent of 1.86 Ares, which is also part and parcel of the plaint schedule property. During 2013, by virtue of sale deed No.4603/2013 of Kochi SRO, the aforesaid K.V. Joseph had transferred the above said 1.86 Ares of property and the residential house in favour of the husband of the plaintiff namely Mr.P.J Joseph. Later, in the year 2016, by virtue of sale deed No.956/2016 of Kochi SRO, the husband of the plaintiff had re-conveyed the above property in favour of the father i.e.. K.V Joseph. Even though the above property had been re-conveyed in favour of the father ie. K.V.Joseph. Even though the above property had been re-conveyed in favour of the father, from

the year 2017 itself, the plaintiff and her family are permanently residing in the above residential house. During all these years, the entire affairs of Late K.V Joseph, were meted out by the plaintiff and her husband. Late K.V.Joseph was a chronic heart patient and also, he had other forms of medical inabilities. Considering the love, affection and medical support spent given by the plaintiff and her husband, late K.V. Joseph would always express his desire to set apart the above 1.86 Ares of property and the residential house situated therein for the beneficial enjoyment of the plaintiff and her family. So also, he would always say that as a consideration for the total amount spent by the plaintiff and her husband, the above property and the residential house will be transferred in their exclusive name. In furtherance of the said desire, during the year 2017, Late K.V. Joseph had even executed a registered sale agreement in favour of the son of the plaintiff as document No.3019/2017 of Kochi SRO, expressing his intention and willingness to transfer the above property in favour of the plaintiff and her husband. The plaintiff was not intended in continuing the joint possession of the plaint schedule property along with the defendants and therefore, she had requested the defendants to divide the plaint schedule property by metes and bounds and to allot

the due shares separately. Though the defendants promised to effect partition and to give separate possession of the share of each party, later they started wriggling out of the promise and started saying that plaintiff has no partible right in the plaint schedule property and the defendants are only prepared to pay a paltry sum of the plaintiff in lieu of her shares in the plaint schedule property. The plaint schedule property is a very valuable one considering its nature, lie and location. On 03.08.2024 the plaintiff directly demanded the defendants to partition the plaint schedule property and to allot her due share but the defendants have not taken any steps to partition the property, but the defendants have openly declared that they are not ready for the same and further threatened the plaintiff that she would be thrown out from the residential house by any means. The defendants have no manner of right or authority to interfere with the peaceful possession of the plaint schedule property by the plaintiff. Hence the plaintiff is not interested to continue with the joint possession and ownership of the plaint schedule property and for which, the interference of this court is highly necessitated. The 1st defendant is entitled to 1/3rd share in the plaint schedule property and the plaintiff along with defendants 2 to 4 are entitled to 1/4 shares each, out of the remaining property.

Hence it is prayed for partition of the plaint schedule property by metes and bounds into 12 equal shares and allot 2/12 shares in favour of the plaintiff and 4/12 share in favour of 1st defendant and 2/12 shares each in favour of the defendants 2 to 4 and to pass a decree of permanent prohibitory injunction restraining the defendants their men, agents and persons claiming under them from alienating or encumbering the plaint schedule property or from making any sort of constructions in such a way effecting feasible partition of the plaint schedule property or from committing any waste therein and also from interfering with the peaceful possession of the plaint schedule property by the plaintiff. Hence the suit.

3. Defendants called absent. Hence the defendants were set exparte.

4. The plaintiff filed proof affidavit and examined as PW1. Exts.A2 to A5 were marked on the side of the plaintiff. Since Ext.A1 is a photocopy not admitted in evidence.

5. Heard.

6. The plaintiff filed proof affidavit and examined as PW1. From the un rebutted evidence of PW1 and from the documents

produced by PW1 the plaint averments stands proved. Hence, the plaintiff is entitled to get a decree as prayed for.

In the result, the suit is decreed as follows:-

- (i) The plaint schedule property is found to be partible by metes and bounds into 12 equal shares.**
- (ii) The plaintiff is entitled to get 2/12 share of the plaint schedule property.**
- (iii) The 1st defendant is entitled to get 4/12 share of the plaint schedule property.**
- (iv) The defendants 2 to 4 are entitled to get 2/12 share each of the plaint schedule property.**
- (v) The defendants are here by restrained by way of permanent prohibitory injunction from alienating or encumbering the plaint schedule property till final decree is passed.**
- (vi) Any of the parties can apply for final decree on payment of requisite court fee.**
- (vii) 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 17th day of September, 2025.

Sd/-
REJANI THANKAPPAN,
SUB JUDGE

APPENDIX:-

Plaintiff's Exbts:-

- A1 True copy of Sale Deed No.4603/2013 of Kochi S.R.O.**
- A2 True copy of Sale Deed No.956/2016 of Kochi S.R.O.**

A3 True copy of Sale agreement registered as document
No.3019/2017 of Kochi S.R.O.

A4 True copy of property tax receipt of the plaint schedule
property for the financial year 2021-2022.

A5 True copy of death certificate of late K.V Joseph.

Defendant's Exbts:- Nil

Court Exbts:- Nil

Plaintiff's witness:-

PW1 26.08.2025 Shali Joseph

Defendant's witness:- Nil

Court witnesses:- Nil

Typed by:ancy

Comp.by:sabeena

Sd/-
SUB JUDGE
(By Order)

/True copy/

Sheristadar