

IN THE COURT OF SUB JUDGE, KOCHI

Present:

Smt. Rejani Thankappan, Sub Judge, Kochi

Wednesday, the 27th day of November, 2024/ 6th Margaseersha, 1946.

O.S. No. 44/2023

Plaintiffs:-

1. Jossy Francis, aged 74 years, S/o Late Francis resident of CC I/1377A, Edamana House, Pattalam, Fortkochi Village, Kochi-682001.
2. Usha Benedict, aged 66 years, W/o A.A Benedict, Arasseril House, Pallippuram.
3. Benny Francis, aged 59 years, S/o Late Francis, resident of CC I/1235B, Edamana House, Chirattapalam, Fortkochi, Kochi-682001.
4. Winna George, aged 58 years, W/o P.V George, CC 14/1451A Parayanthara House, Chullickal, Kochi-682005.
5. Philomina Michael, aged 76 years, W/o late E.F Michael, CC 15/1874, Edamana House, Kallukulam Road, Nazareth, Kochi-682002.
6. E M Jude, aged 58 years, S/o Late Michael, C C 11/1190 B, Edamana House, St. John Pattam, Fortkochi, Kochi-682001.
7. Mary Margretta, aged 56 years, W/o Cleetus, C C 11/1190 B, Edamana House, St. John Pattam, Fortkochi, Kochi-682001.
8. Seena, aged 48 years, W/o Melvin Laj K.X, Koilparambil House, Kumbalanghi Village, Kannamaly, Kochi-682008.
9. Joseph Michael, aged 45 years S/o Michael, resident of C C 15/1874, Edamana House, Kallukulam Road, Nazareth, Kochin-682002.
10. Treasa Shyma, aged 44 years, W/o Antony Joshy, Mulavarikkal House, Post Office Road, Vaduthala P O, Ernakulam.
11. Antony C V, aged 60 years, S/o Varghese, resident of Chadayangad House, Nazareth, Kochi-682002.
12. Judy Alex C V, aged 58 years, S/o Varghese, resident of Chadayangadu House, C 336-113, Nazareth, Kochi-682002.
13. Beatrice Sebastian, aged 56 years, W/o K.X Sebastian, Anandassery House, Mundamveli, Kochi-682507.

14. Francis, aged 53 years, S/o Antony, resident of C C 15/959, Edezhath House, Nazareth, P V Bazil Road, Kochi-682002.(Died)
15. Felix Edezhath Antony, aged 48 years, Resident of C C 15/959, Edezhath House, Nazareth, P V Bazil Road, Kochi-682002.
16. M J Franklin, aged 76 years, S/o Francis, resident of C C 15/752, Maliakkal House, Moolamkuzhi, Beach Road, Kochi-682507.
17. Johnson, aged 43 years, S/o Francis, resident of C C 15/752, Maliakkal House, Moolamkuzhi, Beach Road, Kochi-682507.

Addl. Sheela, W/o Late Francis, C C 15/959, Edezhath House, Nazareth, P18. P V Bazil Road, Kochi-682002.

Addl. Aron Edezhath Antony, aged 7 years, S/o Late Francis, resident of P19. C C 15/959, Edezhath House, Nazareth, P V Bazil Road, Kochi-682002.

Addl. Aiden Edezhath Antony, aged 7 years, S/o Late Francis, resident of P20. C C 15/959, Edezhath House, Nazareth, P V Bazil Road, Kochi-682002.

Addl P 19 & P 20 are minors represented by their mother and natural guardian Sheela.

Addl Plaintiff 18 to 20 are impleaded as per order in IA 2/2024 dtd. 12.7.2024

By Adv. O.J.Alfred

Defendants:-

1. Sebastian Francis, aged 68 years, S/o Late Francis, resident of C C I/1071, Edamana House, Njaliparambu, Fortkochi, Kochi-682001.
2. Matilda Francis, D/o Late Francis, resident of C C I/1071, Edamana House, Njaliparambu, Fortkochi, Kochi-682001.(Missing)
3. Molly Antony, aged 66 years, W/o V.T.Antony, H No 338, Nelliakudikery Port (via), Siddapur, Kodagu, Karnataka-571253.
4. Maggie Thomas, aged 64 years, W/o Vivvy Jacob Thomas, Flat No.1, Swamy Court, 10 Courly Street, Richmond Town, Bangalore-560025.
5. Judy V T, aged 59 years, W/o Vini Mathew, Karmad Village, Ammathi Post, Kodagu, Karnataka-571211.
6. Leena Thomas, aged 51 years, W/o K.S.Thomas, APJ Layout,

Engilgere Post, Kodagu, Karnataka-561253.

7. Josephine Mini V T, aged 44 years, W/o Sabu Joseph, resident of H No. 338, F. Nellihudikery, Post (Via) Siddapur, Kodagu, Karnataka-571253.
8. Sabina Henry, aged 69 years, W/o Late Henry Francis, C/o Mustafa Usman, Near Sree Krishna Vidya Mandir School, South Kodagu, Siddapur, Karnataka-571253.
9. Juliet Mary, aged 45 years, W/o John Britto, resident of 75/3, Britto Nilaya, Papanna Road, 3rd Cross, Bypathi, Bangalore-560077.
10. Julian, aged 42 years, W/o Jerome Saldahma, C/o John Britto, 75/3 Britto Nilaya, Papanna Road, 3rd Cross, Byrathi, Bangalore-560077.
11. Jesintha, aged 40 years, W/o Roshan Rodrigues, Grace Village, Airody Village Post, Udupi Taluk, Karnataka-576226.
12. Sonia Joice, aged 38 years, W/o Peter Fernandez, resident of 1634, 5th Block, 1st Stage, 30th Cross, Hbr layout, Bangalore North, Karnataka-560043.

Exparte

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

This suit having come up for hearing before me on 27.11.2024 and the court on the same day delivered the following :-

JUDGMENT

Suit is for partition .

2. The gist of the averments in the plaint is as follows:- The plaintiffs and defendants ancestor late Edamana Augustine has taken the plaint schedule property on lease from the land owner Thaiparambil Augustine by executing a lease deed in respect of the land in the year 1124 ME and constructed a residential house and a shop. After the death of the said Augustine his son Francis continued to reside in the said building with his family by making certain renovations and additions.

While so, when the land Reforms Act 1/64 came into force in the year 1970, the legal heirs of the land owner Augustin Thaiparambil filed a petition for shifting of Kudikidappu. When the said petition was allowed late Francis preferred OP No.3635/1979 before the Honourable High Court and the Honourable High Court quashed the order of Revenue Divisional Officer and directed the Government to decide the case after taking proper enquiry in accordance with the provisions of KLR Act 1/64. The government entrusted the matter with the proper authority as provided in the KLR Act – The Land Board. The Land Board made necessary enquiry through the Revenue Divisional Officer and on the basis of his report the Land Board decided the case with the finding that the predecessor of the plaintiffs and defendants is a kudiyruppukar and not kudikidappukars and they are not liable to be shifted and the amount deposited by the landlord is ordered to be returned. On that finding the shifting applications were dismissed. Against the said order the said legal heirs of late Thaiparambil Augustine filed suit for declaration that the said order passed by the Land Board is illegal and void as OS No.122/1986 before the Munsiff's Court, Kochi and after taking evidence of both sides the Munsiff Court, Kochi passed a judgment and decree by dismissing the suit on 09.02.1990. No appeal has been preferred and all the previous proceedings became final. The plaintiffs and defendants predecessor late Francis has got twelve children in his two wives. In his first wife ten children and in second wife

two children – plaintiffs 3 and 4. Out of the twelve children plaintiffs 1 to 4 and 1st defendant are alive. The 2nd defendant left the house about 35 to 40 years back and her whereabouts are not known to anybody. At present the 1st defendant alone is residing in the schedule property. All others are residing separately. At the instance and initiative of the 1st plaintiff the purchase certificate in respect of the property has been obtained from the Land Tribunal, Ernakulam in the name of all the legal heirs of late Francis including the defendants. Though the previous legal proceedings are all found in favour of the plaintiffs and defendants they have not obtained authentic certificate in respect of the schedule property. Hence on the basis of the findings of the Land Board, the plaintiffs 1 to 12 filed petition for granting Jenmom Right in respect of the property before the Special Tahsildar, Ernakulam Land Tribunal, Tripunithura. On the basis of the said application after the enquiry through Village Officer the same has been numbered as SM 865/2014 and issued notice to all parties concerned and allowed the application by ordering to issue Patta in the name of the plaintiffs and defendants. The said Patta/Purchase Certificate has been issued from the office of the Ernakulam Land Tribunal on 07.03.2022. After obtaining the Purchase Certificate the 1st and 3rd plaintiffs approached the 1st defendant lastly on 23.04.2023 to come to a settlement in respect of the schedule property to settle the rights of all shares. But he was adamant of his stand that he will not vacate the house. Hence the plaintiffs have

no other way other than to approach this Court for getting the schedule property divided into twelve equal shares and the plaintiffs 1 to 4 are entitled to 1/12 share each and plaintiffs 5 to 10 jointly entitled to 1/12 share, plaintiffs 11, 12 and 13 jointly entitled to 1/12 share, plaintiff No. 15 is entitled to get half of 1/12 share and plaintiffs 16 and 17 jointly entitled to 1/12 share. During the pendency of the suit plaintiff No.14 died. Hence his legal heirs were impleaded as additional plaintiffs 18 to 20 in this case as per order In IA 2/2024. Hence, they are jointly entitled to get half of the 1/12 share. The 1st and 2nd defendant is entitled to 1/12 share each and defendants 3 to 7 jointly entitled to 1/12 share and defendants 8 to 12 jointly entitled to 1/12 share. The plaintiffs and defendants predecessors Edamanaveettil Francis and his 2nd wife Vironi Francis were expired on 09.07.1982 and 22.06.2016 respectively. The plaintiffs and defendants are following Christian Religion and the Indian Succession Act is applicable in respect of succession. Hence the suit.

3. Defendants called absent. Hence, they were set exparte.

4. The plaintiff in this case filed proof affidavit and he was examined as PW1. Exhibit A1 marked.

5. Heard.

6. The plaintiff filed proof affidavit and examined as PW1. From the unrebutted evidence of PW1 and from Exhibit A1 document the plaint averments stands proved.

In the result, Preliminary Decree is passed as follows:-

- (1) The plaint schedule property is divided by metes and bounds into 12 equal shares.**
- (2) Plaintiffs No.1 to 4 are entitled to get 1/12 share each.**
- (3) Plaintiffs No.5 to 10 are jointly entitled to get 1/12 share .**
- (4) Plaintiffs No.11, 12 and 13 are jointly entitled to get 1/12 share.**
- (5) Plaintiff No. 15 is entitled to get half of 1/12 share .**
- (6) Plaintiffs No.16 and 17 are jointly entitled to get 1/12 share.**
- (7) Plaintiffs No.18 to 20 are jointly entitled to get half of 1/12 share.**
- (8) Defendants 1 and 2 are entitled to get 1/12 share each.**
- (9) Defendants No. 3 to 7 jointly entitled to get 1/12 share.**
- (10) Defendants No. 8 to 12 jointly entitled to get 1/12 share.**
- (11) Any of the parties can apply for passing final decree.**
- (12) Cost of the suit shall come out of the estate.**

Dictated to the Confidential Assistant, transcribed and typed by her corrected and pronounced by me in open court on this the 27th day of November, 2024.

Sd/-
REJANI THANKAPPAN,
SUB JUDGE

APPENDIX:-Nil

Plaintiff's Exbts:-

A1 07.03.2022 ക്രയ സർട്ടിഫിക്കറ്റ് നമ്പർ L.T 556573

Defendant's Exbts:- Nil

Court Exbts:- Nil

Plaintiff's witness:-

PW1 29.08.2024 Jossy Francis

Defendant's witness:- Nil

Court witnesses:- Nil

Typed by:vkg
Comp. by:am

Sd/-
SUB JUDGE
(By Order)

/True copy/

Sheristadar

Judgment in
O.S. No. 44/2023
Dated:27.11.2024