

IN THE COURT OF SUB JUDGE, KOCHI

Present :

Smt. Rejani Thankappan, Sub Judge, Kochi

Wednesday, the 4th day of June, 2025/14th Jeyshtam 1947.

O.S. No. 57/2023

Plaintiffs:-

1. Rosh, aged 51 years, S/o Late Gopinathan, Keppully house, Ezhikkara.P.O, Paravur Taluk, Paravur Village, Pin-683513.
2. Roby, aged 48 years, S/o Late Gopinathan, Keppully house, Cherai.P.O, Pallipuram Village of Kochi Taluk, Pin-683514.
3. Ronish, aged 46 years, S/o Late Gopinathan, Keppully house, Nayarambalam Village of Kochi Taluk Pin-682509

By Advs. Rapheeque.C.K, Nidhinkumar.K.B, Vidya.C.V, Neethu Elizabeth, Sulthana.I & Harsha.A.M.

Defendant:-

Roj @ Roshi, aged 49 years, S/o Late Gopinathan, Keppully house, Nayarambalam Village of Kochi Taluk Pin-682509

By Adv. Kishorkumar.K.S(Exparte)

This suit filed under Order VII Rule 1 of the Code of Civil Procedure.

This suit having come up for hearing before me on 23.05.2025 and the court on 04.06.2025 delivered the following:-

J U D G M E N T

The suit is for partition.

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

The plaintiffs and the defendant are the children of late Gopinathan and Thankamani. The plaintiffs and the defendant are the absolute owners and in joint

possession of the scheduled property. The late Gopinathan along with plaintiff and defendant obtained the plaint schedule property by virtue of sale deed No.1053/1985 in the S.R.O. Njarakkal and subsequently during the life time of Gopinathan he executed the settlement deed No.3896/1996 in the S.R.O. Njarakkal and surrendered his right over the said property equally to his wife and children. After the death of Gopinathan and Thankamani, plaintiffs and the defendant becomes the absolute owners and in joint possession of the schedule property. Now the plaintiffs and the defendant have equal right in the scheduled property. A residential building bearing No.11/266 is situated in the schedule property which is constructed by their father along with plaintiffs and defendant jointly. The defendant and 3rd plaintiff are residing in the said residential building with the permission and consent of the other plaintiffs. The plaintiffs and defendant are joint owners and in joint possession of the scheduled property and the present occupation of scheduled property by the 2nd plaintiff along with the defendant is for and on behalf of the other plaintiffs also. The plaintiffs 1 to 3 are entitled to $\frac{1}{4}$ th share each in the scheduled property and the defendant is entitled to get $\frac{1}{4}$ th share. Though the plaintiffs sought for partition of the property by metes and bounds, the defendant is not interested to partition of the property and declined the demand of the plaintiffs. Hence the suit.

3. The defendant filed written statement with following contentions:-

Plaint Schedule property is not property scheduled in the plaint and is scheduled as vague. During the life time of Gopinathan, the father of plaintiff and defendant, had orally executed Will settling his share in favour of the defendant. The schedule of property shown is not the correct schedule to be partitioned and is to be rejected. There is no valid cause of action nor valid pleading to pray for a decree for partition hence the suit has to be dismissed as not maintainable after considering the maintainability issue. There is no proper valuation for settling the pecuniary jurisdiction of the case. Hence the suit is to be dismissed.

4. Considering the rival contentions the following issues are raised for consideration:-

- (i) Whether the plaint schedule property is partible, if so what is the share of the plaintiffs?
- (ii) What is the order as to reliefs and costs?

5. PW1 was examined on the side of the plaintiffs and Exts.A1 to A4 were marked. Though the defendant had filed written statement he remains exparte at the time of evidence.

6. Heard.

7. **Issue No.1** :-

The 2nd plaintiff in this case is examined as PW1. From Ext.A1 Sale deed No.1053/1985 of Njarakkal SRO, it can be seen that the plaintiffs and the defendant have title over the plaint schedule property along with Late Gopinathan

and Late Thankamani, who are the parents of the plaintiffs and the defendant. From Ext.A2 Sale deed No.3896/1996, it can be seen that Late Gopinathan had executed a document in favour of his wife Thankamani, thereby he had transferred his right over the plaint schedule property in favour of his wife. Exts.A3 and A4 shows that the parents of the plaintiffs and the defendants are died intestate. Hence, the plaintiffs and the defendant are jointly entitled to get equal share over the plaint schedule property and the building bearing No.11/266 situated therein. Though the defendant had filed written statement he remained exparte at the time of evidence. Hence, from the unrebutted evidence adduced by the plaintiffs and from Exts.A1 to A4, it can be seen that the plaint claim stands proved. Hence the plaint schedule property is found to be partitioned by metes and bounds into four equal shares and the plaintiffs are jointly entitled to get 1/3rd share of the plaint schedule property and the building therein. Issue No.1 is found in favour of the plaintiffs.

8. Issue No.2:-

Considering the facts and nature of the suit, cost of the suit shall come out of the estate.

In the result,

The preliminary decree is passed as follows:-

- 1. The plaint schedule property is found to be partible by metes and bounds into four equal shares.**

2. **The plaintiffs are jointly entitled to get 3/4th share and separate possession of the plaint schedule property.**
3. **The defendant is entitled to get 1/4th share of the plaint schedule property.**
4. **Any of the parties can apply for passing final decree on payment of requisite court fee.**
5. **Costs 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 4th day of June, 2025.

Sd/-
REJANI THANKAPPAN
SUB JUDGE

APPENDIX:-

Plaintiff's Exbts:-

- A1 06.05.1985 Sale Deed No. 1053/1985 registered at the SRO Njarakkal.
A2 16.11.1996 Sale Deed No. 3896/1996 registered at the SRO Njarakkal.
A3 13.09.2017 Death Certificate of Thankamani.
A4 22.03.2005 Death Certificate of Gopi.

Defendant's Exbts:- Nil

Court Exbts:- Nil

Plaintiff's witness:-

PW1 03.04.2025 Roby

Defendant's witness:- Nil

Court witnesses:- Nil

Typed by:ancy
Comp. by:sabeena

Sd/-
SUB JUDGE
(By Order)

True copy

Sheristadar

Judgment in
O.S. No. 57/2023
Dated: 04.06.2025