

IN THE COURT OF SUB JUDGE, KOCHI

Present:

Smt. Rejani Thankappan, Sub Judge, Kochi

Tuesday, the 10th day of June, 2025/20th Jeyshtam, 1947

O.S. No.61/2023

Plaintiffs :-

1. Shirly Assisi, aged 78 years, W/o Late Peter Assisi, Conrad Dale, Kuruplavu Road, Fortkochi, Pin-682001.
2. Kenneth Constantine, aged 55 years, S/o Peter Assisi, White Village, Moolamkuzhi, Kochi-682002.
3. Constance Sarita, aged 48 years, D/o Peter Assisi, Conrad Dale, Kuruplavu Road, Fortkochi, Pin-682001.

By Advs. Sreely Kumar K.S, Sandeep V.G & Praveen Prabhu

Defendant :-

Carolyn Sonia, aged 50 years, D/o Peter Assisi, Conrad Dale, Kuruplavu Road, Fortkochi, Pin-682001.

By Advs. Siji Joy & Sophiya P.R

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

This suit having come up for hearing before me on 28.05.2025 and the court on 10.06.2025 delivered the following :-

JUDGMENT

Suit is for Partition.

2. Case of the plaintiff is, in brief, are as follows:-

Plaintiff No.1 is the wife of late Peter Assisi, who died intestate on 29.05.2014. Plaintiff No.2 is the elder son, plaintiff No.3 and the defendant are the

daughters of late Peter Assisi. Plaintiffs and defendant are Christians and governed by Indian Succession Act. Peter Assisi was the owner of 2.87 Ares(7.080 cents) of land which includes a pathway having 0.422 Ares in survey No. 675/1 of Fortkochi Village, purchased by him as per document No. 2470/1990 of SRO, Kochi and a residential building bearing No. 4/422 (old 4/1287A) situated therein, which is scheduled as plaint schedule property. After the death of Peter Assisi, plaintiffs and defendant have become the co-owners in possession of the plaint schedule property. At present the plaintiff Nos. 1 and 3 and the defendant are residing in the plaint schedule property. The 2nd plaintiff is residing away from the plaint schedule property. Since the 2nd plaintiff is not interested to continue the joint possession and ownership of the plaint schedule property, he had issued a lawyer notice to the other co-owners on 15.06.2022, demanding partition of the same. He also put forward a suggestion to sell the property to third parties and sale proceeds can be distributed among the sharers, since physical partition of the property is not feasible and none of the sharers are ready to take the property by giving respective share value to others. The plaintiff Nos. 1 and 3 and the defendant have expressed their willingness for partition in such a manner. But the defendant is not keen on adhering to her promise of jointly selling the property and effecting partition as agreed. She has informed the plaintiffs that she will not allow the plaintiffs to

peacefully reside in the plaint schedule property. Since the defendant is not cooperating to partitioning the plaint schedule property, and continuously creating problems for the peaceful residence of the plaintiffs, this suit is filed by the plaintiff for partition.

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

The defendant and her daughter, aged 18 years, are residing in the plaint schedule property. The defendant does all the necessary maintenance work. The defendant is a divorce and she is having no job. The defendant is unable to carry out major maintenance work. As a result the plaint schedule property has fallen into disrepairs piece of the roof have fallen off at times. During the rainy season the room leaks so badly that water falls on the defendant and her daughter's food and while sleep it badly affected. An incident took place in 04.06.2022, till the incident occurred 1st plaintiff and 3rd plaintiff were staying in the plaint schedule property. Now 1st plaintiff and 3rd plaintiff were staying far away from the plaint scheduled property. The defendant contented that living and working in a single room has been quite challenging for this defendant and her daughter. In 2019, the defendant's daughter, Evania, had to use one room to prepare for her 10th boarding exams, and the room had been left vacant for a long time. However, 2nd plaintiffs daughter, Andrea Clare Kenneth and 3rd plaintiff locked the room to prevent the

defendant's daughter from studying there. For the past 13 years, the defendant and her daughter have been using a single room in the plaint schedule property, since the defendant's mother, the 1st and 3rd plaintiffs had restricted the defendant from using the common kitchen. So, the defendant has to set up a small kitchen in very ample space near the defendant's toilet. The kitchen is very congested and dangerous, leading to health issues. Additionally, the gas cylinder is kept in a very crowded manner. The defendant carries out the cleaning and necessary maintenance works. Many times, the defendant's daughter had contacted the 2nd plaintiff to hire someone to clean the backyard and inform them about other maintenance work. No further response has been received from the 2nd plaintiff. An incident of harassment was took place on June 4th 2022, in the plaint schedule property in which the 3rd plaintiff's hurt caused serious injury to the defendant and her daughter. The defendant was seriously injured on the head and was admitted to the Government Taluk Hospital, Fort Kochi. Regarding this criminal case as CC No. 398/2022 is spending before the Judicial First Class Magistrate Court -1 in Ernakulam. After the incident, under the instruction of police officers, the defendant and her daughter stayed nearly two weeks in her friend's house. From now onwards, the defendant in unaware of the plaintiffs's whereabouts. The ACP of Mattancherry police Station, had instructed to open the room to the plaintiff, and

a week was granted for the plaintiff had enquired about the opening of the room. The 2nd plaintiff also informed that the plaintiff is waiting for the court decision on whether to get the room opened. The defendant is ready for the partition in early days. The defendant only demands decent market value otherwise the defendant cannot find out any other house or any shelter for plaintiff and her daughter. After the above said incident another incident happened on 28.05.2022. 3rd plaintiff came to the plaint scheduled property and started a conflict with the defendant, they were not allowed to use the common kitchen, and threatened the defendant's daughter to stop studying in the hall. Troubled by the conflict, the defendant's daughter contacted their neighbour, Mr. Joseph, and Ruby Joseph stopped the 3rd plaintiff from locking the kitchen door. Even after stopping, 3rd plaintiff continued to shout badly and asked the defendant's daughter to tell the defendant to come downstairs. The defendant was on rest due to an injury on the right leg room the maintenance work of their toilet, so the defendant could not go downstairs. Thereafter the defendant's daughter had filed a written complaint to the Mattancherry police station on 30.05.2023. The 1st plaintiff is suffering from mental disorder and was under gone meditation and psychologist treatment for the same. The instances are such that the 1st plaintiff had written an anonymous filthy and malicious letter to the defendant, 2nd and 3rd plaintiffs and all other relatives

and even neighbours, which causing misunderstanding and problems in the families. The 1st plaintiff has also caused problems to the neighbour, Mrs. Marie Isaac, who could not live peacefully and had to leave their home with their family for fear for their lives such anonymous letters about Darryl Bayer. The defendant's father, Peter Assisi, was harassed and injured by the 1st plaintiff several times. This defendant is ready for partition with good market value.

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

- (i) Whether the plaint schedule property is partible or not ?
- (ii) If so, what is the share of the plaintiffs ?
- (iii) What is the order as to Reliefs and costs?

5. PW1 was examined on the side of the plaintiffs and Exts.A1 to A3 were marked. DW1 is examined on the side of the defendant. No exhibits were marked on the side of the defendant.

6. Heard both sides.

7. Issue Nos. 1 & 2 :-

For the sake of convenience and brevity these points are considered together. Case of the plaintiffs is that father of the 2nd and 3rd plaintiffs owned 2.87 ares(7.080 cents) of land and a residential building bearing No. 4/442 (old No. 4/1287 A) situated there in along with a pathway having 0.422 Ares in Sy.No.

675/1 of Fort Kochi village as per Ext.A1 deed No. 2470/1990 of Kochi SRO. Now the plaintiffs No.1 and 3 and the defendant are residing in the plaint schedule property. Since the plaintiffs not interested to continue the joint possession and ownership of the plaint schedule property they wanted partition of the plaint schedule property. The defendant contented that she along with her daughter aged 18 years are residing in the plaint schedule property and she is a divorce. She is unable to carry out major maintenance work. Plaintiffs Nos. 1 and 3 were staying in the plaint schedule property till 04.06.2022. Now they were living far away from the plaint schedule property. During the rainy season the room leaked and water falls in the rooms. For the last 13 years the defendant and her daughter are using single room in the plaint schedule property. Since her mother and 1st and 3rd plaintiffs were restricted her from using the common kitchen.

8. The 2nd plaintiff in this case is examined as PW1. Ext. A1 is the sale deed 2470/1990 of Kochi SRO produced by PW1 which shows that plaint schedule property and the building there in belongs to their father. Ext. A2 is the property tax dated 17.06.2023 issued in the name of father of the plaintiffs and defendant. Ext.A3 is the building tax receipt dated 12.07.2023 in the name of father of PW1 issued from village office, Fort Kochi. From Exts. A1 to A3 it can be seen that the plaint schedule property and the building therein is in the name of PW1. The

defendant was examined as DW1, nothing has been adduced in evidence to show that plaint schedule property is not partible. DW1 is ready for partition with good market value. From the evidence of PW1 and DW1 and Exts. A1 to A3 it can be seen that plaint schedule property is partible into 9 equal shares. The plaintiffs are jointly entitled to get 7/9 shares and the defendant is entitled to get 2/9 shares. Issue Nos. 1 and 2 are found in favour of the plaintiffs.

9. Issue No.3 :-

Cost of the suit shall come out of the estate.

In the result, preliminary decree is passed as follows:-

- 1. The plaint schedule property is found to be partible in '9' equal shares by metes and bounds.**
- 2. The plaintiffs are jointly entitled to get 7/9 shares over the plaint schedule property.**
- 3. The defendant is entitled to get 2/9 shares over the plaint schedule property.**
- 4. Any of the parties can apply for final decree on payment of 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 10th day of June, 2025.

Sd/-
REJANI THANKAPPAN,
SUB JUDGE

APPENDIX:-

Plaintiff's Exbts:-

- A1 Certified copy of document No. 2470/1990 of SRO, Kochi.
A2 17.06.2023 Property Tax receipt.
A3 12.07.2023 Land Tax receipt.

Defendant's Exbts:- Nil

Court Exbts:- Nil

Plaintiff's witness:-

PW1 03.04.2025 & 20.05.2025 Kenneth Constantine

Defendant's witness:-

DW1 28.05.2025 Carolyn Sonia Assisi

Court witness:- Nil

Typed by:ancy
Comp. by:sabeena

Sd/-
SUB JUDGE
(By Order)

True copy

Sheristadar

*Judgment in
O.S. No. 61/2023
Dated: 10.06.2025*