

IN THE COURT OF THE MUNSIFF, KOCHI

Present:

Sri. Karthika K, Principal Munsiff

Monday, the 06th day of March, 2023/ 15th Phalguna, 1944.

O.S. No. 37/2020

Plaintiff:-

1. P.H. Sidheeq, Aged 65, S/o. Late Hamza, residing at H. No. 13/1062, Muthaliyar Lane, Karuvelipady, Kochi – 682 005.
2. P.H Azeez, Aged 51, S/o. Late Hamza, residing at Pullathuparambil House, H.No. 3/212, Eraveli Colony, Fort Kochi, Kochi – 682001, represented by his power holder Sahidha Azeez, aged 42, residing at Pullathuparambil House, H.No. 3/212, Eraveli Colony, Fort Kochi, Kochi – 682001.
3. Sulekha P.H, D/o. Hamza, W/o. M.B Ummer, H.No. 3/824 (Old No. 3/112), Moideenka House, Nelukkadavu, Near Masjid Bay, Fort Kochi, Kochi – 682001.
4. Sheeja Ashkar, Aged 40, W/o. Late P.H Ashkar, residing at H.No. 3/212, Eraveli Colony, Fort Kochi, Kochi – 682001.
5. Ruksana P.A, Aged 19, D/o. Late P.H Ashkar, residing at H.No. 3/212, Eraveli Colony, Fort Kochi, Kochi – 682001.
6. Rubeena P.A, Aged 15, D/o. Late P.H Ashkar, residing at H.No. 3/212, Eraveli Colony, Fort Kochi, Kochi – 682001, represented by her next friend and mother Sheeja Ashkar residing at H.No. 3/212 Eraveli Colony, Fort Kochi, Kochi – 682001.

By Advs. K.S Sathis Babu and Nimmy Joseph

Defendants:-

1. Mohammed Sanoj P.S, Aged 30, residing at C.C 2/838 A, Pathayalthodu Desom, Fortkochi, Kochi – 682 001.
2. P.H Salim, Aged 57, S/o. Late Hamza, Pullothuparambil House, Malippuram, Vypeen.
3. Kochi Co-Operative Society Ltd. Represented by its Secretary, Lalan Road, Mattancherry, Kcohi – 2.
D1 By Adv. R.O Muhamed Shemeem and
Naseeha Beegum P.S (Exparte)
D2 Exparte
D3 By Adv. P.P Raphaelkutty and P.R Thomachan (Exparte)

This suit having been finally heard on 23.02.2023 and the court on 06.03.2023 passed the following:-

JUDGMENT

Suit is one for partition, declaration and permanent prohibitory injunction.

2. The plaintiffs' case in brief is as follows:- P.H. Zainudheen was is in the absolute ownership and possession of plaint schedule property having an extent of 4 cents in Sy.No.499/1 of Fort Kochi Village with a residential building bearing CC No.II/838(A) of Cochin Corporation. The said Zainudheen and his wife was residing in the plaint schedule property.

They have no children. The 1st defendant was residing along with Zainudheen and his wife Nazeema. The said Zainudheen died on 30.09.1997 leaving behind his wife, brothers and a sister as his legal heirs. The 1st defendant claimed that he is the adopted son of Zainudheen and his wife Nazeema. But, Zainudheen and Nazeema did not adopt the 1st defendant as a son as per any provision of law. Hence the 1st defendant cannot claim the right of the adopted son of Sri. Zainudheen and Nazeema. As per the provisions of Muslim Law, as Zainudheen and Nazeema has no children, after his death 1/4th share of his estate will devolve to his wife and balance 2/12 each will go to his brothers and 1/12 to the sister. Subsequent to the death of Zainudheen, on compulsion of 1st defendant, Nazeema executed a release deed in favour of the 1st defendant releasing her 1/2 right over the plaint schedule property as per document No.4909/2013 of Kochi SRO. The said document will not confer any right to the 1st defendant over the plaint schedule property and the said document will not effect the rights of the plaintiffs and 2nd defendant over the plaint schedule property. Plaintiffs came to know that 1st defendant obtained a sum of Rs.8,50,000/- from the 3rd defendant 07.12.2018. Since the 1st defendant has no legal right over the

plaint schedule property the loan sanctioned by the 3rd defendant is not legally enforceable against the plaint schedule property. The plaintiffs are not intending to continue the joint ownership over the plaint schedule property. Plaintiffs are entitled to a decree for partition of plaint schedule property by metes and bounds and to obtain 1/12 share and the 1st defendant is entitled to $\frac{1}{4}$ th share and the 2nd defendant is entitled to get 2/12th share. Plaintiffs are entitled to a decree for declaration that the document No.4734/2018 of Kochi SRO will not bind the rights of the plaintiffs over the plaint schedule property. The plaintiffs also entitled to get a decree of permanent prohibitory injunction restraining the 1st defendant from leasing the plaint schedule property, alienate, committing any waste and inducting strangers and further restraining the 2nd defendant from proceeding against the 7/12 share of the plaintiffs over the plaint schedule property. Hence the suit.

3. Summons were served to the defendants. But defendants did not appear before court. Hence defendants were called absent and were set exparte. The case was posted for plaintiffs' evidence. The 1st plaintiff filed proof affidavit in lieu of chief examination and he was examined as PW1 and Exts.A1 to A3 documents were marked. Ext.A1 is the original power of

attorney executed by 1st plaintiff dated 09.01.2020, Ext.A2 is the certified copy of sale deed No.1372/1994 of Kochi SRO, Ext.A3 is the certified copy release deed No.5202/2012 dated 21.12.2012 executed by Naseema in favour of plaintiffs and 2nd defendant, Ext.A4 is the certified copy of release deed No.4909/2013 dated 17.12.2013 executed by Naseema in favour of 1st defendant, Ext.A5 is the certified copy of mortgage bearing No.1734/2018 executed by 1st defendant in favour of 3rd defendant. Ext.A6 is the encumbrance certificate for the period from 01.01.2013 to 03.01.2020. The plaintiffs have proved their case from the proof affidavit as well as from Exts.A1 to A6 documents. The plaintiffs' evidence remains unrebutted. Hence the plaintiffs are entitled to get a decree as prayed for.

In the result, the **suit is decreed with costs** as follows:-

1. **The property is divided by metes and bounds into 12 equal shares and 7/12 shares are allotted to the separate possession of the plaintiffs.**
2. **It is declared that the document No.4734/2018 executed by the 1st defendant in favour of 3rd defendant will not bind the rights of the plaintiffs over the plaint schedule property (7/12th share).**

3. The 1st defendant is restrained by a decree of permanent prohibitory injunction from leasing the plaint schedule property, alienating, committing any waste and inducting strangers.
4. The 3rd defendant is restrained by a decree of permanent prohibitory injunction from proceeding against the 7/12 share of the plaintiffs over the plaint schedule property.
5. Defendants 1 and 2 shall pay the costs of the suit to the plaintiffs.

(Dictated to the Confdl. Asst, typed by her corrected and pronounced by me in open court on this the 6th day of March, 2023.)

Sd/-
Karthika K.
Principal Munsiff

APPENDIX

Plaintiff's Exhibits:-

A1	09.01.2020	The original power of attorney executed by the 2 nd plaintiff in favour of his wife Sahidha Azeez.
A2	25.03.1994	Certified copy of the Sale deed bearing No. 1372/1944 of SRO, Kcohi
A3	21.11.2012	Certified copy of release deed bearing No. 5202/12 of Kochi SRO
A4	17.12.2013	Certified copy of the release deed bearing No. 4909/2013 of SRO, Kochi
A5	—	Certified copy of Mortgage/hypothecation deed No.

1734/2018 of SRO, Kochi

A6 04.01.2020 Encumbrance Certificate for the period from
01.01.2013 to 03.01.2020

Defendant's Exhibits:- Nil

Court's Exhibits:- Nil

Witness Exhibits Nil

Plaintiff's Witness:-

PW1 23.02.2023 P.H Sidheeq

Defendant's Witness:- Nil

Court's Witness:- Nil

Id/-
Principal Munsiff