

**IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION),  
MUVATTUPUZHA**

Present:- Sri. Atheek Rahman, Civil Judge (Senior Division)

Saturday, the 23<sup>rd</sup> day of August, 2025 / 1<sup>st</sup> Bhadra 1947

**I.A.No. 17/2025 in O.S No.23/2022**

**Petitioner/1<sup>st</sup> & 2<sup>nd</sup> Defendants:-**

- 1 Nabeesa Sainudeen, aged 64 years,  
W/o Late C.H. Sainudeen, Cheriyaajiyl House,  
Perumattom Kara, Velloorkunnam Village,  
Muvattupuzha, Ernakulam.
- 2 Rubiya Sainudeen, aged 27 years,  
D/o Late C. H. Sainudeen, Cheriyaajiyl House,  
Perumattom Kara, Velloorkunnam Village,  
Muvattupuzha.

***By Adv. H. Nujumudeen, Antony Shyju  
& Sherin Achu Ninan***

**Respondents/Plaintiff/Additional Plaintiffs:-**

- 1 Abdul Khader, aged 85 years, S/o Hameed  
residing at Thoppikady @ Cheriyaajiyl House,  
Perumattom Kara, Velloorkunnam Village,  
Muvattupuzha, Ernakulam (Died)
- 2 Fathima Abdul Khader, Cheriyaajiyl House,  
Perumattom Kara, Velloorkunnam Village,  
Muvattupuzha, Ernakulam

- 3 Ameer T.A, Cheriyaajiyl House,  
Perumattom Kara, Veloorkunnam Village,  
Muvattupuzha.
- 4 Muhammed, Cheriyaajiyl House,  
Perumattom Kara, Veloorkunnam Village,  
Muvattupuzha,Ernakulam.

***R1 - Died***

***R2 to R4 – By Adv. Jijo Joseph, Rahim P.M,***

***Nisamol P.H & P.K. Shymy***

This petition is filed under Section 151 of Civil Procedure Code 1908 to reject the suit filed by the original plaintiff as premature and is coming on for final hearing on 21.08.2025 in the presence of the above counsel and the Court on 23<sup>rd</sup> day August 2025 passed the following:-

### **ORDER**

This petition is filed by the petitioners/defendants 2 and 3 under under Section 151 of the Code of Civil Procedure, seeking rejection of the plaint on the ground that it is premature. The petition is supported by an affidavit sworn by the 2<sup>nd</sup> defendant, wherein it is stated that the respondents are the additional plaintiffs and the legal

heirs of late Abdul Khader, who is the original plaintiff in the above numbered suit. The suit is for partition of the plaint schedule properties. As per the Muslim law, the property of the deceased can be partitioned after clearing all the debts owed by the deceased. In the suit, the plaintiff claims that all the property left by the deceased is free from charge and encumbrance, but this is against the real facts. While Sainudheen was alive, all the properties belonging to him mortgaged with HDFC Bank, Co-operative Societies, and others, and the total debt owed by Sainudheen was about three crores of rupees. Therefore, no property remains available for partition in accordance with the Muslim personal law. The suit filed by the original plaintiff itself is premature, as the estate left by late Sainudheen was burdened with debts than its value, and all properties belonging to late Sainudheen under charge of various banks. Therefore, proceeding with the above suit is an abuse of process of law. Hence, this petition.

2. The respondents 2 and 3 filed objection stating that the petition is not maintainable either in law or on facts. The court has

already framed issues, and no issue raised regarding the maintainability of the suit. Moreover, the prayer in the petition is to dismiss the suit without deciding any issue. Therefore, the petition is not maintainable and shall be dismissed *in limine*. The case was listed on 09.06.2025 for evidence, and the respondents filed proof affidavit. But, the petitioners are seeking adjournment in one way or another. Thereafter, this court relisted the case to 02.08.2025. As there was no sitting on 02.08.2025, the case was adjourned to 13.08.2025. On that day, the respondents were present, and this court appointed an Advocate commissioner for taking evidence, but the petitioners are not ready to cross-examine the respondents, and the chief examination was recorded. Again, on 14.08.2025, this court granted a chance to the petitioners to cross-examine the respondents and posted the case on 18.08.2025. However, the petitioners were not ready. The intention of the petitioners is to delay the matter in one way or another. Since the trial of the case has started, the petition for dismissing the suit is not maintainable. No sufficient reason is mentioned in the affidavit for

dismissing the suit. Hence, the respondents prayed to dismiss the petition.

3. Both sides were heard.

4. The point raised for consideration is as follows:-

*Is the suit premature and liable to be dismissed, as alleged?*

5. The point:- I have perused the pleadings in the plaint and the rival contentions raised in this petition. Initially, the suit was filed by Abdul Khader for partition of the plaint schedule properties that belonged to his brother, late Sainudheen, who died intestate. During the pendency of the suit, Abdul Khader passed away, and his legal heirs were impleaded in the suit. Subsequently, the suit was amended seeking partition the share of Abdhul Khader in the property of late Sainudheen among the legal heirs of Abdul Khader. After settling the relevant issues, the suit is now included in the special list for trail.

6. The contention of the petitioners is that, since the debts of late Sainudheen exceeds the value of the property, no property remains available for partition. Under Muslim personal law, the debts must first be discharged and, only thereafter can partition be effected. Therefore, the suit is premature.

7. The above contention of the petitioners cannot be countenanced for the reasons discussed below. After settlement of the relevant issues, the suit now stands included in the special list for trial. PW1 was examined -in- chief and when the case was posted for cross-examination of PW1, this petition was filed. It is significant to note that the issue regarding the partibility of the plaint schedule property has already been settled.

8. Section 63 of the Mahomedan law says that, after payment of funeral expenses, debts and legacies, the first step in the distribution of the estate, of a deceased Mahomedan is to ascertain which of the surviving relations belong to the class of sharers, and

which again of these are entitled to a share of the inheritance, and, after this is done, to proceed to assign their respective shares to such of the sharers as are, under the circumstances of the case, entitled to succeed to a share. The first column in the accompanying table contains a list of Sharers; the second column specifies the normal share of each sharer; the third column specifies the conditions which determine the right of each sharer to a share, and the fourth column sets out the shares as varied by special circumstances.

9. The contention regarding the debts of the late Sainudheen is a matter of evidence and shall be considered only at the time of effecting partition. Sainudheen and Abdul Khader died intestate is undisputed. If that be so, the legal heirs of Sainudheen and Abdul Khader are entitled to maintain a partition suit with respect to the properties left by Sainudheen and Abdul Khader. Therefore, the contention of the petitioners is that the suit is premature has no due force and only to be discarded.

10. The present petition is devoid of merit, has been filed solely to stall the proceedings, and warrants dismissal.

In the result, the petition is dismissed. No costs.

*Dictated to the Confidential Assistant, typed by her directly into computer, corrected and pronounced by me in the Open Court, this the 23<sup>rd</sup> day of August 2025.*

Sd/-  
ATHEEK RAHMAN  
CIVIL JUDGE(SENIOR DIVISION)

**APPENDIX :- Nil**

Sd/-  
CIVIL JUDGE(SENIOR DIVISION)

*Typed by: Ss/-*

*Compd by : Ajn/-*

I.A.17/2025  
in OS 23/2022

- 9 -

**Order**  
**in I.A. 17/2025**  
**in O.S. 23/2022**  
**Dated: 23.08.2025**