

IN THE COURT OF MUNSIFF, MUVATTUPUZHA

Present:

Smt. Shana Beegam, Munsiff

Wednesday, the 14th day of December, 2022/23rd Agrahayana, 1944

O.S No. 148 / 2017

Plaintiffs:

1. Lathika, aged 55 years, W/o Gopi (D/o thankappan, Parakkattu (Chennattu, Onakkoor) now residing at Thekkenjarakkattu House, Kunnel, Uzhavoor Panchayat, Monippilly Village.
2. Syamala, aged 50, W/o Venukumar, Gopi (D/o thankappan, Parakkattu (Chennattu, Onakkoor) now residing at Kandathil House, Maryland, Ellackal, Vellathooval Panchayat, Kunjithanny Village.

By Advocate Gigi Peter.

Defendants:

1. Raju, aged about 52, S/o Thankappan residing at Parakkattu (Chennattu) house, Anchelpetty P.O, Onakkoor Kara, Onakkoor Village.
2. Shaju, aged about 48 years, S/o Thankappan, residing at Parakkattu (Chennattu) house, Anchelpetty P.O, Onakkoor Kara, Onakkoor Village.

D1 By Advocates Rajeevan B.

D2 By Advocate Ajai Mathew.

This suit coming on for hearing on 22.11.2022 and the court on 14.12.2022 delivered the following :

JUDGMENT

Suit for partition.

2. Plaint averments in breif are as follows:-

The plaintiffs and defendants are siblings and children of late Thankappan and Lakshmi. The father and mother of plaintiffs and defendants died intestate on 14/02/2017 and 25/06/2016 respectively. The plaint schedule property belonged to late father Thankappan by virtue of deed No. 2411/1965 of Koothattukulam SRO. The plaint B schedule item in the said deed was set apart to the said Thankappan and during his lifetime transferred certain properties to the defendants and the remaining properties available for partition is scheduled as the plaint schedule properties. The plaint schedule properties are in the joint ownership and possession of the plaintiffs and defendants. The parties are governed by the provisions of the Hindu Succession Act and accordingly the parties are equally entitled to get right over the plaint schedule property. The plaint schedule properties are improved with tapping rubber now and it is aged 13 years and the plaintiffs and defendants are

jointly looking after the whole affairs of the same. The plaintiffs are not intending to hold the plaint schedule properties in joint ownership and possession and accordingly they demanded for the partition and separation of plaint schedule property. But the defendants are not amenable for the same. They threatened the right over the plaint schedule property. They also threatened that they will alienate the plaint schedule property without joining the plaintiffs and will commit mischief, with a view to obstruct partition. Hence, the suit is filed.

3. The first defendant admitted the plaint claim and filed consent statement praying to separate his $\frac{1}{4}^{\text{th}}$ share in the plaint schedule property.

4. The second defendant filed written statement contending as follows:- It is admitted that the father of the plaintiffs and defendants obtained 54.500 cents of property in Sy. No. 901/4A and 31 cents of property in Sy. No. 901/5 in Onakkoor Village by virtue of Will deed No. 2411/1965. While enjoying the same he settled 31 cents in Sy. No. 901/5 and 1 cent in Sy. No.

901/4A in favour of the second defendant as per settlement deed No. 2145/2005 of Piravom SRO. He also settled 32 cents of property in favour of first defendant. Thereafter, the defendants father sold 5 cents of property in Sy. No. 901/4A to the second defendant as per sale deed No. 2675/2006 of Piravom SRO. He had already transferred 69 cents of property to the defendants and the remaining extent is only 16.500 cents. With respect to the said 16.500 cents and the residential building therein the father executed a Will deed No. 202/III/2006 dated 07/11/2006 of Piravom SRO in favour of the second defendant. Thus the father had not died intestate and no property is available for partition. After the death of the father, the mutation has been effected in the name of the second defendant and he is in absolute possession and enjoyment of the same along with his other properties. The plaintiffs are not entitled to get any share in the plaint schedule property. The first defendant is fully aware of the existence of Will deed No. 202/III/2006 and he colluded with the plaintiffs and filed the suit. The second defendant being the absolute owner of the plaint

schedule property, the plaintiffs have no right to interfere with his enjoyment over the plaint schedule property. The cause of action shown in the plaint is not correct. The reliefs claimed in the suit are not allowable. Hence, it is prayed to dismiss the suit with the costs of the defendant.

5. On the above pleadings, the following issues are framed by my learned predecessor :-

- 1. Is the plaint schedule property partible? If so, what shall be the shares entitled to by the parties?**
- 2. Did Thankappan execute Will deed No. 202/III/2006 dated 07/11/2006 of SRO Piravom in a sound disposing state of mind and whether it is his last Will?**
- 3. Equities, if any?**
- 4. Reliefs and costs?**

6. On the side of the plaintiffs, **PW1** was examined. **Ext. A1** marked. On the side of the defendants, **DW1, DW2 and DW3** were examined. **Exts. B1 to B6** were marked.

7. **Issues No. 1, 2 and 3 :-**

As the nature of evidence to be discussed in these issues are similar, these can be considered together. The plaintiffs are the daughters of late Thankappan and Lakshmi who died intestate on 14/02/2017 and 25/06/2016 respectively. Ext.B5 is the death certificate of late C.A Thankappan which would show that on 14/02/2017 he had expired. According to the plaintiffs, their father obtained properties including the plaint schedule property by virtue of Ext.A1. The B schedule item in the Ext.A1 was set apart to the father Thankappan. PW1, the first plaintiff deposed that during the lifetime of her father he had transferred certain properties to the defendants who are her brothers and the remaining properties available for partition is scheduled as the plaint schedule property.

8. The description of the plaint schedule property is “an extent of 19 cents landed property along with all other appurtenants

thereto comprised in Sy.No. 901/4A of Onakkoor Village”. The defendant No. 2 contended that the plaint schedule property is not available for partition. It is pertinent to note that by virtue of Ext.A1, late father obtained an extent of 22 Ares 3 sq.meters of property in Sy. No. 901/4A and 12 Ares 51 sq meters of property in Sy.No. 901/5 as B schedule to the document. The total extent in cents would come around 85.31. Out of the same, by virtue of Ext.B1 settlement deed, the father had settled an extent of 32 cents of property in favour of defendant No. 2 and by virtue of Ext.B2 settlement deed an extent of 32 cents of property was settled in favour of defendant No. 1. DW1 the second defendant deposed before the court that the father had also executed Ext.B3 a sale deed with respect to the 5 cents of property in Sy. No. 901/4A belonged to him in his favour. Ext.B3 was executed on 07/11/2006. Further, the defendant No. 2 contended that by virtue of Ext.B4 Will deed the father bequeathed 16½ cents of remaining property in Sy.No. 901/4A in his favour. So according to the defendant No. 1 at present there is no property available for partition.

9. It is pertinent to note as I stated that, by virtue of Ext.A1, the father obtained 85.31 cents of property and out of the same by virtue of Ext.B1 defendant No. 2 obtained 1 cents in Sy.No. 901/4A and 31cents in Sy.No. 901/5. By virtue of Ext.B2 the defendant No.1 obtained 32 cents in Sy.No. 901/4A. So after assigning the property by virtue of Ext.B1 to defendant No.2 there is no remaining property in Sy.No. 901/5 obtained by the father and only the remaining property is comprised in Sy.No. 901/4A and it will come around 22 cents. The contention of defendant No. 2 is that out of the entire 85.500 cents of property obtained by the father he already transferred 69 cents to the defendants and the remaining extent is 16.500 cents. PW1 challenged the execution of Ext.A4 Will deed alleged to be executed in favour of second defendant. According to the plaintiffs, the plaint schedule property is available for partition and no document with respect to the said property was made by the late father.

10. Ext.B4 is the alleged Will deed and Ext.B3 is the sale deed. Both documents are seen executed on 07/11/2006. It is

pertinent to note that these documents was prepared by DW3, Mr. Raveendran Nair at his office. However, the attesting witnesses to these documents are different. The attesting witness to Ext.B4 are Pariyarathu Kuriakose George and one Thekkemalayil Kuttappan Pradeep who was examined as DW2. The attesting witness to Ext.B3 are Kalarickal Paily Kuriokose and Pazhukkottayil Sreedharan Shaji.

11. DW1, the second defendant deposed before the court that Ext.B1 and B2 are executed on the same date in favour of the defendant No. 1 and 2. Thereafter, the father had executed Ext.B4 Will deed with respect to 6.67 Ares of property and during the time of execution of the Will he was at a sound disposing state of mind. Ext.B6 would show mutation has been effected with respect to the property obtained by DW1 by virtue of Ext.B4, Exts. B1 and B3. He further deposed that the execution of the Will is known to the plaintiffs as well as the first defendant. He even deposed the fact that he had seen his father putting his signature in the Will and also the attesting witnesses. During cross examination DW1 admits the fact that his father had not settled any property in favour of his

sisters (plaintiffs). He also deposed the fact that in the 16 cents of property his father had made rubber cultivations and they are the main yields in the property.

12. From the deposition of DW1 it can be gathered that he had visited the scribes office at 11.30 am and he had spend there for two hours, thereafter he returned. He also deposed that the father had not intimated about his visit to the scribe office. Further in continuation of the cross he deposed that he visited the scribe's office for the purpose of preparing a document and the details of the document was recited to the DW3 by the father. He further deposed that for the purpose of constructing a house he requested 5 cents of property from the father and he admitted the same and for that purpose he had went to the office of the scribe at Piravom. He further deposed that only thereafter, he come to know that father is going to execute the Will bequeathing his remaining property to him. The deposition made seems to be strange. He also deposed the fact that after preparing the document he doesn't know whether the father had went to Sub Registrar Office. He further deposed that

he had not accompanied the father to the Sub Registrar Office for the purpose of registration. He even deposed that he had omitted to state about the fact that he had witnessed the father putting his signature in the Will deed while preparing the written statement. He even admits the fact that he had read the Will deed and there is no recitals with respect to the plaintiffs therein. Thereafter, he deposed that the father had went to Registrar Office but the witness has not accompanied him. So going through the version of DW1, one thing is clear is he was present at the scribe's office when two documents are prepared and executed in his favour.

13. DW2 is one of the attesting witness to Ext.B4. He deposed that the said scribe DW3's office is nearby to his shop and further deposed that late Thankappan Nair had called him to be a witness to the document. DW2 also deposed that he knew late Thankappan Nair as he is a customer of his vegetable shop. He deposed that he had witnessed Thankappan Nair putting his signature in the document and witnessed the same and Thankappan Nair had also seen that DW2 putting his signature in the document.

It is pertinent to note that DW2 while showing the document ie, Ext.B4 Will deed takes time to find out his signature in the document and at last he identifies his signature in page No.3 of Ext.B4. In cross examination DW2 deposed that while he went to Raveendran Nair's office (DW3) the defendant No.2 was also present there. The shop rooms of DW2 as well as other witness is nearby to the scribe's office and he went there at 12 O'clock and at that time the document was already prepared. He along with other attesting witness went to the scribe's office. DW2 deposed that at about 1 O'clock late Thankappan Nair went to the Registrar Office and the defendant No.2 also accompanied him to the Registrar's Office. Further, DW2 deposed that the document was written on a stamp paper and stamp paper was purchased by late Thankappan Nair and he handed over the same to the scribe DW3. From the deposition DW2 it is clear that from the date of execution of Will deed, he is acquainted with defendant No. 2 and their relationship is for about 16 years.

14. DW3 is the scribe who is of aged 74 years. It is pertinent to note that though he is very well familiar about the facts relating to Ext.B4 Will deed which was executed about 16 years back he is ignorant about the document which was prepared by him recently about two three days back. Even Exts.B1, B2 and B3 was prepared by the same scribe DW3. He correctly remember the document which was prepared during 2006. He correctly states the name of the witnesses to the document and it may be of the reason that the witnesses are conducting their shops nearby to his office. But strangely he deposed that at the date of execution of Ext.B4 document he had executed only one document. So from the entire evidence of DW3 it can only be gathered that he is a tutored witness.

15. The counsel for the plaintiffs relied on the decisions **Sabitha vs. Satheesan reported in 2022 (1) KLT 16** wherein the Hon'ble Court held that the propounder has a legal obligation apart from proving the execution and genuineness of the Will to explain the suspicious circumstances, if any, surrounding the execution of the Will. The counsel also relied on the decisions **Ajay P. Asher vs.**

Kirit P.Asher & Anr reported in 2011 (3) KLJ 631 wherein the court held that there can be no straight jacket formula to decide the genuineness of a Will and what is required to be established by a person claiming under a Will is to satisfy the conscience of the court by removing all suspicions, which a reasonable man may entertain in the facts and circumstances of the case. Further the counsel relied on **Kavita Kanwar vs. Pamela Mehta and Others reported in 2020 KHC 6394** wherein the court held that an unfair disposition of property or an unjust exclusion of legal heirs particularly dependents, is regarded as a suspicious circumstance. Connecting to the fact of the case it can be seen that here the plaintiffs are completely avoided from Ext.B4 Will. Even defendants have no case that the plaintiff obtaining any other properties of the father. There remains a suspicious circumstance with respect to the exclusion of plaintiffs. Even DW1 admits the fact that the plaintiffs had given no property of the father. It is pertinent to note that in the recitals in Ext.B4 the names of plaintiffs are also recited and it is further recited that to all the children, property has been already given and there is

nothing remains to be given and as the father and mother are residing along with defendant No.2 the remaining property is settled in his favour. The father has also reserved the life interest of the mother in the schedule property. Strangely one more recital is there in Ext.B4 with respect to a jackfruit tree lying on the north-western side of the plaint schedule property and there it is recited that defendant No. 1 had every right to cut the same if it is necessary. So it can be seen that the other natural heirs are excluded from the Ext.B4 Will deed. Even though it is recited in Ext.B4 that to all the sharers properties are already settled there is no such share allotted to the plaintiffs and from Exts.B1 and B2 it can be seen that properties are already allotted to defendants No. 1 and 2.

16. Further another suspicious circumstance existing in the execution of Ext.B4 is the presence of the beneficiary ie, DW1 himself at the scribe's office. His version of appearance at the scribe's office is not at all believable. He says that he went to execute a sale deed with respect to the 5 cents of property belonged to the father which he requested and consented by the father to

execute in his favour. Further he states that he came to know about the Will later only after executing these 5 cents document in his favour.

17. So from evidence of DW1 it can be gathered that the father had went to the scribe's office along with DW1 and he knows about the Will deed when on the very same date another document was executed in his favour there is some suspicious circumstance existing in the execution of Will deed in favour of the DW1. The execution of the Will deed cannot be concluded as intended by the father to be executed. The defendant No. 2 failed to remove the suspicious circumstances existing in the execution of Ext. B4 Will deed. Hence, the genuineness and validity of the Ext.B4 Will deed is not proved before the court. The genuineness of Ext.B5 sale deed also not established before the court. The plaint schedule property in Sy.No. 901/4A is found partable. Hence, issues are found accordingly.

18. Issue No. 4 :-

In view of the above issues the suit is decreed as follows:-

1. The plaint schedule property shall be divided into four shares by metes and bounds.
2. The plaintiffs are entitled to get $\frac{1}{4}^{\text{th}}$ share each over the plaint schedule property.
3. The defendants are also entitled to get $\frac{1}{4}^{\text{th}}$ share each over the plaint schedule property.
4. The costs shall come out of the estate.

For further steps.

Dictated to the Confidential Asst., typed by her, corrected and pronounced by me in the open court on this 14th day of December, 2022.

Sd/-
Shana Beegam
Munsiff

APPENDIX

Plaintiff's Exhibits:

A1 12.10.1965 Certified copy of Deed No.2411/1965 of SRO,
Koothattukulam.

Defendant's Exhibits:

B1 23.08.2005 Settlement Deed No.2145/2005 of SRO Piravom.

- B2 23.08.2005 Certified copy of Settlement Deed No.2144/2005 of SRO Piravom.
- B3 07.11.2006 Certified copy of Sale Deed No.2675/2006 of SRO Piravom.
- B4 07.11.2006 Will Deed No.202/3/2006 of Piravom SRO.
- B5 11.03.2022 Death certificate issued from Pampakuda Grama Panchayath.
- B6 26.06.2018 Tax receipt issued from Village Office

Court Exhibits : NIL

Plaintiff's Witness:

PW1 01.06.2022 Lathika Gopi

Defendants Witnesses:

DW1 27.07.2022 Shaju C.T.

DW2 27.07.2022 T.K.Pradeep.

DW3 25.08.2022 Raveendran Nair.

Court Witness: Nil.

SAA.
Comp.

//True copy//

Id/-
Munsiff.

Munsiff.