

IN THE COURT OF THE MUNSIFF KOLENCHERY

Present:- **Smt. Sirsha N A, Munsiff**

Friday, the 6th day of September, 2024 / 15th Bhadra, 1946

OS No. 41 / 2022

Plaintiff :-

Sathish K.R, S/o Raman Nair, aged 44 years, Kadukkattu House,
Iykkaranadu North Village, Kadamattom Kara, Kunnathunadu
Taluk, Ernakulam District.

By Advs. R.Pradeep, C.Dilip and Anushka Vijayakumar

Defendant :-

Bindu Jagadeesan, aged about 45 years D/o Jagadeesan, now
residing at Sreenilayam, Vettor P.O, Vettoor Village,
Pathanamthitta District, Pin : 682306.

**By Advs. Jeevan P Charles, George Sebastian and
Arun Luckose Abraham (Exparte).**

This suit came up before me for hearing on 29/08/2024 in the
presence of the above said counsels and the Court on 06/09/2024 delivered
the following :-



JUDGMENT

1. The above suit is one for partition.

2. The plaint averments are as follows: As per Sale deed No.2277/2001 of S.R.O, Puthencruz, the plaint schedule property extending 3.23 Ares of land comprised in Re-Sy No.229/5-3 & 229/5-4 in Block No.42 (Old No.238/2) of Thiruvaniyoor Village of Kunnathunadu Taluk came in the ownership of P.N.Rajesh, S/o P.K.Narayanan, Penattuparambil, Thiruvankulam Village, Irumbanam Desom, Kanayannoor Taluk. The defendant is the wife of P.N.Rajesh. The whereabouts of P.N.Rajesh are not known for the last more than 19 years. The plaintiff understands that P.N.Rajesh was found missing while he was serving Kerala Police department and in connection with the missing of P.N.Rajesh, there was police enquiry. The property owner P.N.Rajesh had availed loan from Kerala Police Housing Co-Operative Society, Ernakulam and one Mr.Jojan Joseph and Mr.Ramesh K.D were sureties to the loan transaction. When the principal borrower defaulted repayment, the sureties were compelled to repay the loan amount. Invoking their right of subrogation, the sureties then filed O.S No.142/2013 before the Munsiff's Court, Ernakulam for the realization of Rs.35,075.00 by Mr.Jojan Joseph



and a sum of Rs.23,855.00 by Mr.Ramesh K.D. The plaintiffs in that suit had raised a plea that the death of P.N.Rajesh can be presumed as per Section 108 of Indian Evidence Act, 1872. Since the parties belong to Hindu Religion, all properties of P.N.Rajesh, including the plaint schedule property were inherited by the defendant herein and the mother of P.N.Rajesh, Smt.Ramani. Since the liability to pay debt created by the deceased is joint and several among the legal heirs, the plaintiffs in O.S No.142/2013 had proceeded against the mother alone as the sole defendant in the suit. Principal Munsiff's Court, Ernakulam, on 28.02.2014 passed decree and judgment in the suit allowing plaintiffs to realize a sum of Rs.35,075.00 with interest at the rate of 6% along with Rs.23,855.00 as cost from the defendant. The decree passed by the Principal Munsiff's Court, Ernakulam was transferred and sought to be executed through Munsiff's Court, Kolenchery where the defendant had assets. In E.P No.4/2016 in O.S No.142/2013 on the file of this Court, the one-half undivided share of Smt.Ramani, the defendant/judgment debtor, in plaint schedule property was put in auction and the plaintiff being a third party has participated in court auction and purchased the property in auction. After the confirmation auction, the execution court issued an auction certificate in favour of the plaintiff and the same is produced herewith. The original

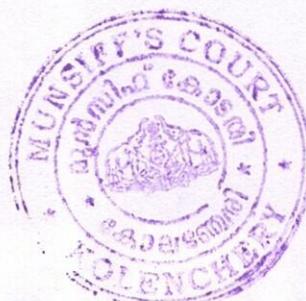


owner of plaint schedule property, P.N.Rajesh was an employee under Kerala Police Department and he is a person missing for the last more than 18 years. The whereabouts of P.N.Rajesh are unknown to all persons who were closely associated with him, including his close relatives. In connection with the missing of Rajesh, FIR No.457/2003 was registered by the Hill Palace Police, Thripunithura and they could not trace the details of the missing person. Hence it is a fit case to presume that the property owner is no more. So, the plaint schedule property is now in the joint ownership of plaintiff and defendant having equal rights to both. So, now, plaint schedule property is in the joint ownership and possession of plaintiff and the defendant having one half undivided right each. Though the plaintiff demanded an amicable partition of the plaint schedule property, the defendant is not willing to execute and register a deed of partition of the plaint schedule property. Hence the plaintiff is entitled for a decree allowing the partition and allotment of $\frac{1}{2}$ share in the plaint schedule property.

3. The defendants entered appearance, but did not file the written statement and hence set set exparte

4. The following issues arise for trial:

1. Whether the plaint schedule property is partible ?



2. If so, what is the quantum of share to which the plaintiff is entitled to ?
3. What is the quantum of share to which the defendant is entitled to ?
4. Reliefs and costs.

5. When the case was posted for evidence, the plaintiff was examined as PW1 and Ext.A1 and Ext.A2 were marked.

6. Heard.

7. **Issues no.1 to 5:** The plaintiff has proved her contentions in the plaint through affidavit and her evidence which remains unchallenged. Ext.A1 is the certified copy of judgment in O.S No.142/2013 dated 28.02.2014 on the files of Principal Munsiff Court, Ernakulam and Ext.A2 is the certificate of Auction dated 25.01.2019 issued by Munsiff's Court, Kolenchery. From the evidence adduced it is revealed that the plaint schedule property is in the joint ownership and possession of plaintiff, is partible in which the plaintiff and the defendant having one half undivided right each. So these issues are found in favour of the plaintiff.

8. **Issue No:6:** In the light of discussions in issues No:1 to 5 it is clear that plaint schedule property is partible and the plaintiff is entitled to get ½ share in the property. The defendant is entitled to get ½ the share in the property .



In the result suit is decreed as follows:

1. Plaintiff schedule property shall be divided into 2 equal shares and the plaintiff is entitled to get ½ share in the property.
2. The defendant is entitled to get ½ the share in the plaintiff schedule property.
3. The share of the defendant shall be allotted to them on payment of requisite court fees.
4. Any of the party can approach before the court for passing final decree.

(Dictated to the Confdl.Asst, typed by her, corrected and pronounced by me in open court, this the 6th day of September, 2024).

Sd/-
Sirsha N A
Munsiff

Appendix :-

Plaintiffs' Exhibits:

- A1 28.02.2014 Ext.A1 is the certified copy of judgment in O.S No.142/2013 on the files of Principal Munsiff Court, Ernakulam.
- A2 25.01.2019 Ext.A2 is the certificate of Auction issued by Munsiff's Court, Kolenchery.

Defendant's Exhibits : Nil

Court Exhibits :- Nil

Witness Exhibits :- Nil

Plaintiffs' Witness :

PW1 24.08.2024 Sathish K.R

Defendants' Witness : Nil

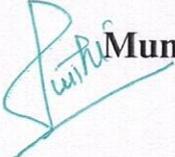
Court Witness : - Nil

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Id/-
Munsiff


Munsiff

JUDGMENT
in
OS No. 41 / 2022
Dated : 06/09/2024