

IN THE COURT OF THE MUNSIF, KOTHAMANGALAM

Present : Sri. Ganesh Kumar M.S, Civi Judge (Junior Division)

Saturday, the 29th day of March 2025/08th Chaithra 1947.

OS No.124/2023

- Plaintiffs:-**
- 1 Sisily Joseph, aged 65 years, W/o. T K George, Thekkekunel House, South Punnamattom Kara, Kadavoor Village, Kothamangalam Taluk.
 - 2 Mercy Joseph aged 63 years, D/o.Paily Joseph, Aenanickal House, Pidavoor Kara, Varappetty Village, Kothamangalam Taluk.
 - 3 Joseph Paul aged about 74 years, S/o. Paily, Aenanickal House, Pidavoor Kara, Varappetty Village, Kothamangalam Taluk. Joseph.

By Adv.s.M/s. Joshy Joseph, Soumya Murali, Dona M Thajudheen.

Defendant: Joy Joseph aged about 69 years, S/o. Paily Joseph, Aenanickal House, Koovalloor Kara, Pothanicad Village, Kothamangalam Taluk.

Exparte.

This suit is coming on for final hearing on 18.01.2025 in the presence of counsel for plaintiffs and defendant is set exparte. From the side of the plaintiffs, the 2nd plaintiff was examined as PW1. Ext.A1 to A7 were marked and on 29.03.2025 the court passed the following:-

ORDER

1. The suit is for partitioning in the plaint schedule properties by metes and bounds.

2. **The plaint averments, in brief, are as follows:-** The plaintiffs and the defendant are siblings. The plaint A and B schedule properties, originally belonged to Paily Joseph, father of the parties to the lis and plaint C schedule property, originally belonged to Aleykutty, mother of the parties to the lis. The father and mother of the parties to the lis, went for their heavenly abode on 29.10.2000 and 13.11.2022, respectively. Thus, the plaintiffs and defendant became the co- owners of the plaint schedule properties is by virtue of intestate succession. The plaintiffs requested the defendant to partition the plaint schedule properties. The said request was turned down by the defendant. Hence, it is necessary to partition the plaint schedule properties by metes and bounds. Thus, the suit.

3. Despite receipt of summons, the defendant didn't turn up to contest the suit. Hence, he was set ex-parte.

4. From the above, the following issues came up for

consideration:-

1. Whether the plaint schedule properties are liable to be partitioned? If so, what shall be the shares each parties are entitled to?

2. Reliefs and costs?

5. From the side of the plaintiffs, the 2nd plaintiff was examined as PW1. Ext.A1 to A7 were marked.

6. Heard and perused the records.

7. **Issue No.I:-** The 2nd plaintiff filed proof affidavit, in lieu of examination in chief, in tune with the plaint averments. From Ext.A1- Sale deed, it is clear that Paily Joseph is the absolute owner of plaint A schedule property. From Ext.A2- Sale Deed, it is clear that the aforesaid person is the absolute owner of plaint B schedule property. It is pertinent to note that even though it is pleaded that the mother of the plaintiff-Aleykutty, owned and possessed plaint B schedule property by virtue of Sale deed No.645/1968 of SRO, Kothamangalam, no document was produced from the side of the plaintiff to show that the aforesaid Aleykutty owned and possessed

plaint C schedule property. Hence, there is nothing on the records to believe that the aforesaid Aleykutty owned and possessed plaint C schedule property. Thus, the relief sought for as against plaint C schedule property is hereby refuted, in light of the fact that the plaintiffs failed to prove that plaint C schedule property was owned by their mother.

8. As already discussed, from Ext.A1 and A2, it is axiomatic that plaint A and B schedule properties was obtained by the father of the parties to the lis. From Ext.A6 and Ext.A7 death certificates, it is clear that the father and mother of the parties to the lis passed away on 29.10.2000 and 13.11.2022, respectively. Hence, it goes without saying that the properties covered in Ext.A1 and A2 devolved upon the parties to the lis by virtue of intestate succession. Admittedly, they are Christian and thus they are governed by the provisions of Indian Succession Act, 1925. From the unchallenged, evidence of PW1 it is clear that the parties to the lis are the children of deceased Paily and Aleykutty. Thus, they are equally entitled to plaint A and B schedule properties by virtue of intestate succession

(see section 33 and 35 of Indian Succession Act, 1925). Thus, from the above discussion, I am satisfied that plaint A and B schedule properties are liable to be partitioned among the parties to the lis equally. Since, the plaintiffs have failed to establish the right which they alleged to have been vested with their mother with respect to plaint C schedule property, this court is not inclined to grant the partition of said plaint C schedule property among the parties to the lis. Thus, this point is answered accordingly.

9. **Issue No.II**:-The general rule is that costs shall follow the event/cause. Considering the nature of suit coupled with the relationship with the parties, I am not inclined to award costs of the suit to any of the parties to the lis.

10. In light of my findings on issue No.I, I am of the view that the suit is liable to be decreed in parts.

In the result,

Preliminary decree is passed as follows:-

1. It is hereby declared that plaint A and B schedule properties are liable to be partitioned among the parties to the lis by metes and bounds.
2. The parties to the lis are entitled to $\frac{1}{4}$ share each over the plaint A and B schedule properties.
3. The share of the defendant shall be allotted only on payment of appropriate court fee, even though his right is also declared as mandated by the decision of Hon'ble High Court of Kerala in the case of **K.T. Thomas v. Anna @ Accamma John and others** reported in **2018 (3) KLT 322**.
4. Suo moto, final decree proceedings are hereby initiated. Parties to the lis are allowed to file appropriate application for drawing up the final decree as mandated by the decision of Hon'ble Supreme Court in the case of **Kattukandi Edathil Krishnan v. Kattukandi Edathil**

Valsan reported in **2022 (3) KLT 924**. Thus, suit is listed for taking steps under Order XX Rule 18 CPC. For steps, if any. Call on 09.04.2025.

(Dictated to the Confidential Asst., typed by her corrected and pronounced by me in open court on this the 29th day of March, 2025)

Sd/-

Ganesh Kumar.M.S

Civil Judge (Junior Division)

APPENDIX

Plaintiff's Exhibits:

- A1 07.11.1953 : Certified copy sale deed No.3030/1935 issued from SRO, Kothamangalam.
- A2 29.02.1968 : Certified copy of sale deed No.645/1968 issued from SRO, Kothamangalam.
- A3 10.07.2023 : Tax receipt No.KL07061002831/23 issued from Village Office, Pothanicaad.
- A4 11.07.2023 : Tax receipt No.KL07061304774/2023 issued from Village Office, Pallarimangalam.
- A5 22.06.2023 : Tax receipt No.KL07061002536/23 issued from Village Office, Pothanicaad.
- A6 12.12.2023 : Death Certificate of Paily Joseph key No.D0020192-00103112987 issued from Kothamangalam Municipality.
- A7 12.12.2023 : Death Certificate of Alekutty Joseph Key No.D0040688-20221208239 issued from Pothanicaad Grama Panchayat.

Defendants Exhibits: NIL

PW1 18.05.2024 : Mercy Joseph

Defendants Witness: NIL

Id/-

//True copy//

Civil Judge (Junior Division)

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