IN THE COURT OF THE MUNSIFF, KOLLAM.

Present : Smt. Ragi.S., Principal Munsiff.

On Wednesday, the 6th day of August, 2025/15th day of Sravana, 1947.

OS. No. 1003/2015

Between

Plaintiff:-		Jayaprasad.V., aged 46 years, S/o Vasudevan, Mangalathu Veedu, Mundanchira, Ward No. 4, House No. 255, Mandankavu, Keralapuram, Chandanathoppu P.O, Kollam 691 014. By Advs. Saiju.J, Sudheesh Babu & Ram Manoj.A.S.
And		
Defendants:-	1.	Jaya Kumar.V, aged 44 years, S/o Vasudevan, Mangalathu Veedu, Mundachira Mandankavu, Keralapuram, Chandanathoppu P.O, Kollam 691 014.
	2.	Jaya Prakash.V., aged 55 years, S/o Vasudevan, K.S.Bhavan, Anchumala Kunnu, Mullakara P.O, Kadakkal (Via), Kollam 691 536.
	3.	Prasanna Kumaran.V, aged 59 years, S/o Vasudevan, Leela Vihar, House No. 22, Mythri Nagar, Pattathan P.O, Kollam 691 021.
	4.	Vijaya Kumar.V., aged 61 years, S/o Vasudevan, Leela Vihar, House No. 22, Mythri Nagar, Pattathanam P.O, Kollam 691 021
Additional Defendant No.	5.	Leela Vijayakumar, aged 55 years, W/o Vijya Kumar, Leela Vihar, Mythri Nagar, Pattathanam P.O, Kollam.
Additional Defendant No.	6	Vivek.V.L, aged 30 years, S/o Vijayakumar, Mythri Nagar, Pattathanam P.O, Kollam.

Additional Defendant No. 7 — Vineetha.V.L, aged 26 years,
D/o Vijayakumar, Mythri Nagar,
Pattathanam P.O, Kollam.

Additional D5 to D7 are impleaded as the legal heirs of the deceased 4th defendant as per order dated 08/04/2021 in IA. 5237/2019.

By Advs. Sivasankara Pillai,
G.Jayantha Kumar for D1,
Babu Sanker for D3 and D4 &
Rukshana.S. for D5 to D7.

This suit is filed by the plaintiff u/s. 26 Order VII Rule 1 of the Code of Civil Procedure for Partition and Recovery of rent. This suit is coming on for final hearing before me on 16-07-2025 and the court on 06-08-2025 delivered the following :-

JUDGMENT

Suit for partition and for recovery of rent.

2. **Plaint averments, in brief, are as follows:-** The plaintiff and his mother Vilasini, had jointly purchased the plaint A schedule property, having an extent of 2.43 ares in resurvey No. 7/2/2 and 0.81 ares in resurvey No. 7/2/3, as per sale deed No. 970/07 on 30/03/2007. The purchase money was advanced by the plaintiff from his own funds, and the mother's name was included in the document since she was residing with the plaintiff. The defendants are the brothers of the plaintiff and the sons of Vasudevan and Vilasini. The property of the plaintiff's father and defendant's was sold, and the sale proceeds were equally partitioned among the plaintiff, mother, and defendants. With the funds received from that sale, together with his own earnings, the plaintiff purchased the plaint A schedule property. The building situated

therein was renovated by the plaintiff at a cost of Rs 1 lakh. The plaintiff's family and mother, Vilasini, resided in the house situated in the plaint A schedule property. Subsequently, when the plaintiff obtained employment in Bangalore, the 1st defendant started residing at the said house to look after the mother's needs, which were met from the money spent by the plaintiff.

3. From the property proceeds, an amount of Rs. 1,50,000/- was deposited in the name of Vilasini in Indian Overseas Bank, Chandanathoppu branch, for her benefit. This amount is referred as the plaint B schedule. Additionally, Vilasini proposed four sovereigns of gold ornaments, which are described as the plaint C schedule. Vilasini passed away on 06/03/2015. After Vilasini's death the B schedule money was withdrawn from the bank by the 1st defendant, who was the nominee at bank and C schedule gold was sold by the 1st defendant and used by him without giving plaintiff's share. For which the plaintiff is entitled to get the 1/5th share.

4. After the death of Vilasini, the 1st defendant has been illegally occupying the building in the plaint A schedule property. Therefore, he is liable to pay the plaintiff rent of Rs. 1000/- per month, as specified in the D schedule, until he vacates the premises. The plaintiff is ready and willing to pay the share value of the defendants as per law, in accordance with their right of succession after the death of Vilasini. Vilasini had ½ share in the plaint A schedule property. Out of this, the plaintiff and the defendants are entitled to 1/5th share each. Consequently, the plaintiff has 6/10th share in the plaint A schedule property, while defendants 1 to 4 each have 1/10th share. The current market value of the plaint A schedule property, including, is

approximately Rs. 5,00,000/-. The plaintiff has offered to pay Rs. 50,000/- each to the defendant towards the value of their share, but they have refused to accept the same. The plaintiff is also entitled to get Rs. 33,000/- from the 1st defendant with respect to the B schedule money, Rs. 15,000/- with respect to the C schedule property, and Rs. 6000/- towards rent as per the D schedule. Thus, a total of Rs. 54,000/- is due to the plaintiff from the 1st defendant. Hence, the suit is filed to allow the plaintiff's 6/10th share of A schedule property or in the alternative, to permit the plaintiff to deposit the value of 1/10th share each to defendants 1 to 4 and to recover 1/5th share of the B schedule value ie, Rs. 33,000/- from the 1st defendant and to recover 1/5th share of the C schedule value of Rs. 15,000/- from the 1st defendant and also to realize the rent due of Rs. 60,000/- with future rent from the 1st defendant. Hence the suit.

5. **D1 filed written statement contending as follows:** The plaint schedule property cannot be partitioned in the manner sought by the plaintiff. The plaintiff is not residing at the address stated in the plaint and has never resided in the plaint schedule property at any point of time. He has been a permanent resident of Bangalore for several years. The plaintiff and his mother did not jointly purchase the plaint schedule property as claimed, nor did the plaintiff contribute any amount towards the consideration for its purchase. The plaintiff has been a permanent resident of Bangalore for more than 15 years. The 2nd defendant and his family are permanent residents of Pune, the 3rd defendant has been residing in Delhi for several years, and the 4th defendant resides with his family at Pattathanam.

6. A small house and 4 cents of property situated in resurvey No. 565/8 of Perinadu Village were owned in the name of the mother. This house was renovated at the expense of the 1st defendant. Thereafter, the 1st defendant, along with his family and the mother, resided jointly in the said building. This property and building were sold on 22/01/2007. The plaint schedule property was purchased on 30/03/2007 using the sale consideration of the said property. Since the renovation had been carried out early at the expense of the 1st defendant, the mother had informed the 1st defendant that the plaint schedule property would be purchased in the name of both herself and the 1st defendant. Being the one who cared for the mother, the 1st defendant was assured that the property would devolve exclusively upon him after her lifetime. However, since no settlement deed was executed, no document was registered to that effect. During registration of the title deed, the plaintiff accompanied the mother to the Sub Registrar's Office. Taking advantage of a minor difference between the names of the plaintiff and the 1st defendant, the plaintiff misled the mother into believing that the property was being registered jointly in her name and the name of the 1st defendant. In reality, the plaintiff surreptitiously substituted his own name in place of the 1st defendant's name. The mother had specifically informed the 1st defendant that the property was to be purchased in the name of herself and the 1st defendant, and the 1st defendant genuinely believed the same. During the lifetime of the mother, the plaintiff never asserted any right over the plaint schedule property. After her demise, the plaintiff retained the original title deed in his custody, and raised a claim for half share (½) in the plaint schedule property.

7. The contention of the plaintiff that the property belonging to the father and the consideration thereof were equally divided among the parties, and that the plaintiff used his share along with personal funds to purchase the scheduled property, is absolutely false. The plaint schedule property was purchased entirely using the sale proceeds of the mother's property at Perinadu. At the time of such purchase, the plaintiff was permanently residing in Bangalore with his family and did not contribute even a single rupee towards the purchase, renovation, or construction of the building in the plaint schedule property. The 1st defendant alone bore the expenses for maintenance and repair of the building and, along with his family and the mother, has been residing therein ever since.

8. The sum of Rs. 1.5 lakhs deposited by the mother in the bank did not arise from the sale consideration of the property in the father's name. It was from the sale of the property in the mother's name, which the 1st defendant alone perused through litigation (OS No. 465/1990 before Munsiff's Court, Nedumangadu) up to the Hon'ble High Court of Kerala, at his own expense. At the time of the sale, the plaintiff misappropriated a portion of the sale proceeds, and the remaining sum was deposited by the mother in the bank with specific instructions that it be used for her medical treatment and post-death rites. The 1st defendant was nominated in the bank account for this purpose.

9. At the time of her death, the mother did not possess the gold ornaments mentioned in C schedule. The gold ornaments that were with her were sold under the supervision of the eldest brother, the 4th defendant, in the presence of the 2nd

defendant, and Rs. 55,000/- was realized and distributed after deducting expenses for medical care and funeral ceremonies. During the nine months of hospitalization proceeding her death, the plaintiff neither visited nor enquired about the mother. The care was taken by the 1st defendant and his wife.

10. The building in the plaint schedule property was maintained and repaired at the expense of the 1st defendant, who has continuously resided there. The 1st defendant is under no legal obligation to pay rent for a building that he owns and has constructed. Both the plaintiff and the defendants have only an equal 1/5th share in the plaint schedule property. The 1st defendant is willing to pay Rs.1,00,000/- towards the plaintiff's 1/5th share, as valued by the plaintiff himself. There is no necessity to sell the property. The values assigned to schedules B and C are imaginary and fabricated to support a baseless plaint. None of the reliefs sought in the plaint deserve to be granted. Hence, the suit is liable to be dismissed with costs of the 1st defendant.

11. Defendant No.2 remained exparte.

12. **The 3rd defendant filed written statement contending as follows**: The plaintiff and the defendants are the legal heirs of deceased Vilasini. The averments in paragraph 1 of the plaint are true and therefore accepted. The averments in paragraph No.2 are not fully correct and are to be proved by the plaintiff. The averments in paragraph No. 3 are also correct but are to be proved by the plaintiff. The averments in the paragraph No. 4 is correct. It is true that without the knowledge of the other defendants and the plaintiff, the 1st defendant sold the gold and withdrew money from the bank. The other points are to be proved. The averments in paragraph No. 5 are

correct and admitted. The averments in paragraph No. 6 are not fully correct. The 3rd defendant has not received any share amount from either the plaintiff or the defendants.

13. Defendant No.4 has passed away. His legal heirs have been impleaded as additional defendants 5 to 7 as per the order in IA 5237/2019.

14. Additional defendants 5 to 7 jointly filed written statement by contending that they are legal heirs of the 4th defendant. The 4th defendant had a share in the schedule property, and it is to be declared by the court so that partition may be effected. The averments in paragraph No. 1 are true and hence admitted. The averments in paragraph No. 2 are not fully correct and must be proved by the plaintiff. The averments in paragraph No. 3 also correct but are to be proved by the plaintiff. The averments in paragraph No. 4 are correct. It is true that, without the knowledge of other defendants and plaintiff, the 1st defendant sold the gold and withdrew money from the bank. The other averments are to be proved. The averments in paragraph No. 5 are correct and admitted. The averments in paragraph No. 6 are not fully correct. The 4th defendant had not received any share amount from the plaintiff or the defendants. The averments in paragraph No.7 are also not fully correct and must be decided on merit. The share of the 4th defendant may be allotted to additional defendants 5, 6 and 7. Hence, the plaint schedule property may be partitioned after taking and appreciating the evidence.

15. Based on the above rival contentions the following issues were raised for consideration by my learned predecessor.

1. Was the document of 30/03/2007 executed infavour of the plaintiff, due to fraud, as alleged?
2. Is the plaint A schedule be partitioned? If yes, what should be the share of the plaintiff?
3. Is the plaintiff entitled to any share in the plaint B schedule sum? If yes, what should be his share?
4. Is the plaintiff entitled to any share in gold value of plaint C schedule property? If yes, what should be his share?
5. Is the plaintiff entitled to the rennovation of the building in the plaint A schedule property in his favour?
6. Is the plaintiff entitled to any rent amount?
7. Is the suit valued correctly or the court fee paid is insufficient?
8. Reliefs and cost?

16. During the trial, the plaintiff was examined as PW1 and Exts.A1 to A6 documents were marked. Ext.A7 series were marked as subject to proof. From the side of the defendants no evidence, either oral or documentary, was adduced.

17. Issue No’s 1 to 8 in the suit is recast as follows:

1. Was the document of 30/03/2007 executed infavour of the plaintiff, due to fraud, as alleged?
2. Is the plaint A schedule be partitioned? If yes, what should be the share of the plaintiff?

3. Is the plaintiff entitled to any share in the plaint B schedule sum? If yes, what should be his share?
4. Is the plaintiff entitled to any share in gold value of plaint C schedule property? If yes, what should be his share?
5. Is the plaintiff entitled to realize the rent due of Rs. 6000/- with future rent from the 1st defendant as sought for?
6. Reliefs and costs?

18. Heard the learned counsel for the plaintiff and the learned counsel for the defendants.

19. **<u>Issue No’s. 1 & 2</u>**: The plaintiff’s case is that he and his mother Vilasini jointly purchased plaint A schedule property, comprising 2.43 ares in resurvey No. 7/2/2 and 0.81 ares in resurvey No. 7/2/3, through Ext.A1 sale deed No.970/2007 dated 30/03/2007. According to the plaintiff, he provided the entire purchase money, including his mother's name in the deed as she was residing with him. After purchase, the plaintiff renovated the building situated on the property by spending Rs. 1,00,000/-. The plaintiff’s family and his mother resided there. Subsequently, the plaintiff moved to Bangalore for employment, and the 1st defendant began residing in the house to care for the mother. After the death of Vilasini, the 1st defendant continued to occupy the house without the consent of the plaintiff, compelling the plaintiff to claim rent until the 1st defendant vacates. Vilasini’s one half share over the A schedule devolved equally on the plaintiff and the other legal heirs, the plaintiff entitled to total 6/10th share, defendants 1 to 3 entitled to 1/10th share each, and thus

the additional defendants 5 to 7 (legal heirs of the deceased 4th defendant) jointly entitled to 1/10th share. The plaintiff valued the property including the building at Rs. 5 lakh and offered to pay Rs. 50,000/- to each defendant as their share value, but they refused. Consequently, the plaintiff seeks to partition of the property, allotment of his 6/10th share, or, alternatively, permission to deposit the value of 1/10th share for each defendant and to secure exclusive possession in his share.

20. The 1st defendant disputes the plaintiff's claim, contending that the property cannot be partitioned as sought, alleging that the plaintiff never resided there and has been a permanent resident of Bangalore for over fifteen years. He claims that the property was purchased partly from the sale proceeds of the mother's property at Perinad Village and partly from his own funds. He further asserts that he incurred all expenses for the renovation and that the mother had agreed to purchase the property in the joint names of herself and the 1st defendant, even expressing willingness to execute a settlement deed in his favour. The 1st defendant alleges that, during registration, the plaintiff misled the mother by substituting his own name for that of the 1st defendant and retained the title deed without showing it to anyone. However, except for these bare allegations, no evidence was adduced by the 1st defendant to prove that the sale deed was executed infavour of plaintiff by fraud.

21. The plaintiff, examined as PW1, denied these allegations and stated that an amount of Rs. 3,00,000/- had been transferred to the 1st defendant's account on 28/08/2007 for purchasing the property, producing a bank statement in support. Though the plaintiff also deposed that he had spent money for renovation, no

documentary evidence was produced to substantiate the claim. So much so, the burden is purely on the plaintiff that he effected renovation work in the house.

22. Ext.A1 is the certified copy of sale deed, shows that the plaint A schedule property was jointly purchased by the plaintiff and Vilasini. Ext.A2, land tax receipt shows that the plaint A schedule property was mutated infavour of the plaintiff and her mother Vilasini. As per Ext.A1, the plaintiff holds one-half share. Upon Vilasini's death, her half share devolved equally upon all her children. Accordingly, the plaintiff is entitled to his original half share (50%) + his inheritance share 1/8 (12.50%)=5/8 (62.5%), ie 6/10th share over the plaint A schedule property and the building situated therein. The defendants 1 to 3 are each entitled to 1/8th share each, and defendants 5 to 7, who are the legal heirs of the deceased 4th defendant are jointly entitled 1/8th share over the plaint A schedule property.

23. On the strength of Exts. A1 to A6, the plaintiff has established his predominant ownership and exclusive possession of his rightful share. Hence, the plaint A schedule property is liable to be partitioned, and issue Nos. 1 and 2 are found infavour of the plaintiff.

24. **<u>Issue No's 3 &4</u>**: The plaintiff claims a 1/5th share over the plaint B and C schedule properties, contending that he is entitled to recover his share from the 1st defendant, who withdrew and utilized the funds without accounting for the plaintiff's portion. The plaintiff also claims entitlement to 1/5th share of the amount realized from the sale of gold ornaments. The 1st defendant contend that the sum of Rs. 1,50,000/- deposited by the mother in the bank did not originate from the sale

consideration of the father's property. At the time, OS No. 465/1990 concerning 32 ½ cents of property in the mother's name was pending, and as no other siblings were willing to continue the case, the 1st defendant pursued it at his own expense. The matter was finally decided infavour of the mother by the Hon'ble High Court of Kerala, after which the property was sold. In the written statement, the 1st defendant denies the plaintiff's entitlement to a 1/5th share of the B and C schedule amounts, asserting that the mother had specifically instructed that the bank deposit was to be used for the medical treatment and funeral rites. The 1st defendant, as the nominee of the bank account, oversaw these expenses. He alleges that the plaintiff did not contribute anything towards the treatment or funeral ceremonies. After deducting the treatment and funeral expenses, a sum of Rs. 39,500/- each was given to defendants 2, 3 and 4. The 1st defendant further contends that any amount claimed by the plaintiff from the mother's savings had already been adjusted against his notional share of the funeral expenses. The 1st defendant additionally asserts that the plaintiff did not visit or enquire about the mother during her nine months of hospitalization and that the 1st defendant and his wife took full care of the mother during this period. He disputes the claim that the mother possessed four sovereigns of gold at the time of her death but admits that certain gold ornaments were sold under the supervision of the 4th defendant and that Rs. 55,000/- was realized and used for expenses.

25. According to the 1st defendant, the plaintiff did not spend any amount for treatment or ceremonies, and the entire expenditure was borne by the defendants. However, no statement or documentary evidence was produced showing the exact

amount spent by each defendant. It is significant to note that, his written statement, the 1st defendant admitted that an amount of Rs. 1,50,000/- was deposited in the mother's bank account and, along with Rs. 55,000/- received from the sale of gold, the amount was distributed under the 4th defendant’s supervision. The 1st defendant further admitted that, after deducting expenses for the mother's treatment and funeral ceremonies, an amount of Rs. 39,500/- each was given to defendants 2, 3 and 4. However, the written statement does not specify how much was spent individually by defendants 1 to 4 towards the mother's treatment and ceremonies. No evidence adduced by the defendants to substantiate the same. It has not been specified or described in the C schedule as to which gold ornaments were in the possession of the deceased Vilasini. Although it has been alleged, both in the pleadings and in the schedule, that four sovereigns of gold ornaments were with her, the 1st defendant has denied this assertion. In these circumstances, the burden of proof lies upon the plaintiff to establish that four sovereigns of gold ornaments were indeed in the possession of the mother at the time of her death. Since the plaintiff has failed to prove this fact, he is not entitled to claim any amount towards the value of the C schedule. In view of the pleadings, evidence, and admissions on record, it is evident that the amount deposited in the mother’s bank (Rs. 1,50,000/-) constitute joint family assets. As there are five sharers- the plaintiff and defendants 1 to 4- the plaintiff is entitled to 1/5th share of the said amount, and the remaining 4/5th share shall be divided equally among defendants 1 to 4. Accordingly, the plaintiff granted 1/5th share over the B schedule, with a direction to effect partition or distribution in accordance with law. Thus, it can be concluded that plaint B schedule is partiable and the plaintiff is entitled 1/5th share therein and plaint C schedule is not liable for partition. Thus, issue No's. 3 and 4 are found accordingly.

26. **Issue No.5**: According to the plaintiff after the death of Vilasini, the 1st defendant is occupying the building situated in the plaint A schedule property illegally and is therefore, liable to pay the plaintiff rent at the rate of Rs.1,000/- per month. The amount so claimed is described in plaint D schedule. It is, however an admitted fact that the 1st defendant is a co-sharer has a right to enjoy every part of the joint property until partition. The law presumes that each co-owner is the absolute owner in respect of each part and parcel of the land (Pathumma V. Muhammed). Possession by one co-sharer is presumed to be on behalf of all co-sharers unless there is clear evidence of exclusion or ouster. In the present case, there is no landlord-tenant relationship between the plaintiff and the 1st defendant. Therefore, the plaintiff is not entitled to claim rent from the 1st defendant as sought. If a co-sharer enjoys income from the joint property exclusively, he must account for the profits proportionately. However, in this case, the plaintiff has not claimed any mesne profits against the defendants. Since the 1st defendant is a co-sharer, he cannot be treated as a tenant and he is not liable to pay rent to the plaintiff. Accordingly, issue No.5 is found against the plaintiff.

27. **Issue No.6**: In the result, suit decreed in part, and a preliminary decree is passed in the following terms:

1. The plaint A and B schedule properties shall be divided into five shares by metes and bounds.
2. The plaintiff is entitled to 6/10th share in the plaint A schedule property and the building situated therein and 1/5th share over the B schedule (Rs.1,50,000/-) his share shall be separated.
3. The defendants 1 to 3 are entitled to 1/8th share each over the A schedule and the building situated therein and 1/5th share each over the B schedule. The additional defendants 5 to 7 are jointly entitled 1/8th share over the plaint A schedule and the building therein and 1/5th share over the B schedule. Their shares are not separated for want of payment of court fees.

Equities and reservations can be considered at the final decree stage.

Costs of the suit shall come out of the estate.

For final decree proceedings call on 12/09/2025.

(Dictated to the C.A, transcribed and typed by her, corrected and pronounced by me in open court on this, the 6th day of August, 2025).

Sd/-
Ragi.S.,
Principal Munsiff.

Appendix:-

Exhibits marked from the side of the Plaintiff:-

A1	30-03-2007	Sale Deed No. 970/2007
A2	16-07-2022	Land Tax Receipt

A3	23-11-2022	Possession Certificate
A4	01-07-2022	Internet Payment Receipt
A5	19-10-2015	Death Certificate
A6	05-11-2022	KSEB Demand notice.
A7 Series		Statement of transaction in Account for the period from 01-04-2005 to 31-03-2008. (Subject to proof).

Exhibits marked from the side of the Defendant:- Nil

Witness Examined from the side of the Plaintiff :-

PW1	05-03-2025	V.J.Prasad.

Witness Examined from the side of the Defendant :- Nil

Id/-
Principal Munsiff.

// True Copy//

Sd/-
Ragi.S.,
Principal Munsiff.

Typed by : Marybindu. C.
Compared by : Jaseela.