

IN THE COURT OF THE MUNSIFF'S, PUNALUR  
PRESENT :- Smt. Reshma R.S, Civil Judge (Junior Division)  
Saturday the 29<sup>th</sup> day of June 2024/8<sup>th</sup> day of Ashadha, 1946.

**OS 199/2020**

**Between**

**Plaintiffs** : 1. Omanayamma, aged 65 years,  
W/o Rajappan Pillai, Baiju Bhavan, Ayilara P.O,  
Ayilara Muri, Ayiranalloor Village,  
Punalur Taluk.  
2. Anil Kumar, aged 43 years, S/o Rajappan Pillai,  
Baiju Bhavan, Ayilara P.O, Ayilara Muri,  
Ayiranalloor Village, Punalur Taluk.  
3. Biju Pillai, aged 40 years, S/o Rajappan Pillai,  
Baiju Bhavan, Ayilara P.O, Ayilara Muri,  
Ayiranalloor Village, Punalur Taluk.  
**(By Adv. S.R Amrit)**

**And**

**Defendant** : Baiju R, aged 38 years, S/o Rajappan Pillai,  
Manakkattu Veedu, Avaneeswaram R.S P.O,  
Avaneeswaram Muri, Thalavoor Village,  
Pathanapuram Taluk.  
**(By Adv. Rajaneesh Babu)**  
**(Ex-parte)**

This suit is coming on for final hearing before me on 13-06-2024 and stood over for consideration to 29-06-2024 and on the same day the Court delivered the following.

**JUDGMENT**

Suit for partition and separate possession.

2. **The plaint averments, in brief, are as follows:** - The plaintiffs 2, 3 and the defendant are the children born to the lawful wedlock of 1<sup>st</sup> plaintiff and Mr. Rajappan Pillai, who is the son of Damodaran Pillai. The parties are Hindus and are governed by the Indian Succession Act, 1959.

The husband of the 1<sup>st</sup> plaintiff and father of the plaintiffs 2, 3 and the defendant has been missing since 15/04/1993. On 17/04/1993, the 1<sup>st</sup> plaintiff lodged a complaint before the Sub-Inspector of Police, Anchal, about her husband's missing. Even though, the plaintiffs, defendant and their close relatives tried to find him, they did not receive any information about him till date. The plaint A, B and C schedule properties are owned by the 1<sup>st</sup> plaintiff and her husband Rajappan Pillai by virtue of sale deed No. 3742/1992 of Anchal S.R.O. Land tax being remitted in the said properties as per thandaper No. 13930 of Ayiranalloor Village. The plaint D schedule property owned by Mr. Rajappan Pillai by virtue of sale deed No. 4619/1986 of Anchal S.R.O. Land tax being remitted in the said property as per thandaper No. 6976 of Ayiranalloor Village. For more than seven years, the plaintiffs and defendant have no knowledge about said Mr. Rajappan Pillai. Hence it can only be assumed that he was not alive on the date of filing of the suit. The plaintiffs and the defendant are the legal heirs of said Mr. Rajappan Pillai. In the plaint A, B and C schedule properties, the 1<sup>st</sup> plaintiff has entitled to 5/8 share, the plaintiffs 2, 3 and the defendant have entitled to 1/8 share each over the same. The plaintiffs and the defendant have entitled to 1/4 share each over the plaint D schedule property. The plaint schedule properties are in the joint possession and enjoyment of the plaintiffs and the defendant. On several times, the plaintiffs demanded for partition and separate possession of their

respective shares of the plaint schedule properties to the defendant. But the defendant was not ready for the same. Hence, this suit.

3. Even though summons was served to the defendant, he did not appear before the court. Hence, this court ordered to proceed the case against the defendant *ex-parte*.

4. From the side of the plaintiffs, the 1<sup>st</sup> plaintiff was examined as PW1 and Exts.A1 to A3(a) documents were marked.

5. Heard counsel for the plaintiffs.

6. In the light of the decision of the Hon'ble Apex Court in **Ramesh Chand Ardawatiya v. Anil Panjwani** reported in (2003) 7 SCC 350, the following points for determination are framed:

- 1) Are the plaintiffs entitled to a decree as prayed for?
- 2) Relief and costs?

7. **Point Nos.1 and 2:** - The learned counsel for the plaintiff argued that the plaintiff is entitled to get the decree as prayed for. The Hon'ble Apex Court in **Ramesh Chand Ardawatiya's case** (*Supra*) held that; *“Even if the suit proceeds ex-parte and in the absence of a written statement, unless the applicability of Order VIII, Rule 10 of the C.P.C. is attracted and the Court acts thereunder, the necessity of proof by the plaintiff of his case to the satisfaction of the Court cannot be dispensed*

*with.” It was further held that “Yet the trial court would scrutinize the available pleadings and documents, consider the evidence adduced, and would do well to frame the 'points for determination' and proceed to construct the ex-parte judgment dealing with the points at issue one by one. Merely because the defendant is absent, the Court shall not admit evidence the admissibility whereof is excluded by law nor permit its decision being influenced by irrelevant or inadmissible evidence.”*

8. The Hon'ble High Court of Kerala in **T. Sheeja v. C.P. Balakrishnan** reported in **2018 (4) KLJ 395** held that; *“even in a case where the defendant is set ex-parte, the judgment shall reflect the facts of the case and the controversy involved and tried to be settled by the court.”*

9. Bearing in mind the above decisions, I had gone through the evidence on record. The 1<sup>st</sup> plaintiff filed chief affidavit reiterating the plaint averments and was examined as PW1. According to PW1, the plaint A, B and C schedule properties are owned by her and her husband Rajappan Pillai by virtue of sale deed No. 3742/1992 of Anchal S.R.O. PW1 produced the sale deed No. 3742/1992 and the same is marked as Ext. A1. PW1 deposed that the plaint D schedule property owned by her husband Mr. Rajappan Pillai by virtue of sale deed No. 4619/1986 of Anchal S.R.O. Certified copy of the same is marked as Ext. A2. The land tax receipts (2 Nos.) dated 13/03/2020 are marked as Exts. A3 and A3(a).

PW1 gave evidence reiterating the averments made in the plaint. The learned counsel for the plaintiffs argued that the plaintiffs are entitled to the reliefs as prayed for. It was argued that the husband of the 1<sup>st</sup> plaintiff and father of the other plaintiffs and the defendant is not heard for more than 7 years, and hence, it can only be presumed that he is not alive. To substantiate his version, the learned counsel for the plaintiffs relied on the decision of the Hon'ble High Court of Kerala in **Velayudhan Sarojini v. Sankaranarayanan Sivanandhan**, reported in **1956 KLT 126**. The learned counsels for the plaintiffs also relied on the decision of the Hon'ble High Court of Kerala in **Vareed v. Sukumaran**, reported in **1988 (1) KLT 45**, and in **Aniyan Narayanan Ezhuthachan v. Vasanthakumari Thankamani**, reported in **2011 SCC Online Ker 2166**. According to PW1, she and plaintiffs 2 and 3 are also the legal heirs of Mr. Rajappan Pillai, they are entitled to get their share over the plaint schedule properties. The learned counsel for the plaintiffs argued that the evidence of PW1 clearly shows that the plaintiffs have every right over the plaint schedule properties and therefore the plaintiffs are entitled for partition and separate possession of their respective share over the plaint schedule properties.

10. Here, in the present case, it is to be noted that there is nothing on record to the contrary. The allegations levelled against the defendant has

not been answered by him. In such a parlance, it can only be said that the plaintiffs case stands proved by the unchallenged evidence of the plaintiffs. Hence, this court is of the view that, the plaintiffs are entitled to get a relief as prayed for. The general rule is that “costs shall follow the event”. But considering the relationship between the parties, this court is of the view that this is not a fit case in which the plaintiffs can realise the costs of proceedings from the defendant. Thus, all the points are answered accordingly.

**In the result**, the suit is decreed as follows: -

- a. The plaint schedule properties are found partible.
- b. A preliminary decree of partition of plaint schedule properties by metes and bounds is granted.
- c. The 1<sup>st</sup> plaintiff is entitled to get 5/8 share over the plaint A, B and C schedule properties.
- d. The 2<sup>nd</sup> and 3<sup>rd</sup> plaintiffs are entitled to get 1/8 share each over the plaint A, B and C schedule properties.
- e. The plaintiffs 1 to 3 are entitled to get 1/4 share each over the plaint D schedule property.

- f. The defendant is entitled to get 1/8 share over the plaint A, B and C schedule properties and 1/4 share over the plaint D schedule property.
- g. The defendant's share shall be allotted on payment of requisite court fees.
- h. The plaintiffs are entitled to be put in possession of their share demarcated in the final decree.
- i. Any of the parties may move the court for passing a final decree in these proceedings itself as held by the Hon'ble Apex Court in Kattukandi Edathil Krishnan and Another v. Kattukandi Edathil Valsan and Others, reported in 2022 (3) KLT 924.
- j. Equities, if any, will be considered at the final decree proceedings.
- k. The case is listed for taking steps under Order XX Rule 18 of the Civil Procedure Code, 1908.
- l. Considering the relationship between the parties, there shall be no order as to costs.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court on this the 29<sup>th</sup> day of June 2024)

Sd/-  
Civil Judge (Junior Division)

