

## IN THE COURT OF THE MUNSIFF, PUNALUR

PRESENT :-Smt. Reshma.R.S, Munsiff.

Tuesday the 5<sup>th</sup> day of November 2024/14<sup>th</sup> day of Karthikam, 1946.**OS 359/2018****Between**

**Plaintiff** : Sreelatha K.G, aged 43 years, D/o Gopalan, residing at Mangalathu Veedu, Anapettakongal P.O, Thenmala Panchayath, Edamon Village, Punalur Taluk, Kollam District, Kerala.

**(By Adv. S.R Amrit)****And**

**Defendants** : 1. Sarasamma, aged 64 years, D/o Kunjikutty, residing at Mangalathu Veedu, Anapettakongal P.O, Thenmala Panchayath, Edamon Village, Punalur Taluk, Kollam District, Kerala.  
2. Pradeep, aged 44 years, S/o Arjunan, residing at Mangalathu Veedu, Anapettakongal P.O, Thenmala Panchayath, Edamon Village, Punalur Taluk, Kollam District, Kerala.

**(By Adv. S.S Binu)****(Ex-parte)**

This suit is coming on for final hearing before me on 23-10-2024 and stood over for consideration to 05-11-2024 and on the same day the court delivered the following.

**JUDGMENT**

Suit for declaration, partition and injunction.

2. **The plaint averments, in brief, are as follows:** - The plaintiff is the daughter-in-law of the 1<sup>st</sup> defendant. The 2<sup>nd</sup> defendant is the son of 1<sup>st</sup> defendant. The marriage of the plaintiff was solemnized on 10/05/2009 at Mahadevar Temple, Thirunakkara, Kottayam with Mr. Pyarelal, the son of 1<sup>st</sup> defendant, as per the religious rites and ceremonies. The husband of the plaintiff, Mr. Pyarelal, expired on 07/12/2017. No children were born in the marital relationship of plaintiff and Pyarelal. The defendants are living in inimical terms with the plaintiff after the

death of Mr. Pyarelal. The plaint A schedule property is devolved on the husband of the plaintiff as per settlement deed No.3864/1999 of Punalur SRO. Mutation was effected and land tax was remitted in Thandapper account No.6828 of Edaman Village. The plaint A schedule property was in absolute ownership, possession and enjoyment of said Pyarelal till his death. The plaint B schedule property is jointly devolved on the plaintiff and her husband, Pyarelal, as per sale deed No.929/2016 of Ezhukone SRO. The plaintiffs and defendants are Hindus and are governed by the provisions of Hindu Succession Act. The plaint schedule property is in joint possession of the plaintiff and 1<sup>st</sup> defendant, after the death of Mr. Pyarelal. The plaintiff got ½ rights each over the plaint A and B schedule properties. The plaintiff got reliable information on 07/08/2018 that the 1<sup>st</sup> defendant executed settlement deed No.784/2018 with respect to the plaint A schedule property in favour of the 2<sup>nd</sup> defendant. Thereafter on 08/08/2018, the defendant applied before the Sub Registrar, Punalur and obtained the certified copy of it. From the said document it is revealed that the 1<sup>st</sup> defendant executed the document by suppressing the fact that the plaintiff is the legally wedded wife of the deceased Pyarelal. It is falsely recited in the said document that the 1<sup>st</sup> defendant is the sole legal heir of the deceased Pyarelal. The 1<sup>st</sup> defendant has no right or authority to execute settlement deed No.784/2018 of Punalur SRO in favour of the 2<sup>nd</sup> defendant. The said document is not binding on the rights of the plaintiff over the plaint A schedule property and the same is to be ignored. The plaint C schedule is a Maruti Alto Car bearing registration No.KL-25-E-8298. The deceased Pyarelal is the registered

owner of the said vehicle. The said vehicle is possessed and used by him during his lifetime. The said car is now in used by the 1<sup>st</sup> defendant. The plaintiff got ½ rights over the present value of said car. The defendants are using the said car in such a manner to reduce its value. The 1<sup>st</sup> defendant may be directed to deposit the value of the car before this court. The plaintiff on 05/09/2018 has demanded the 1<sup>st</sup> defendant to partition the plaint schedule properties. But she refused to accept the said demand. Hence, this suit.

3. **The defendants filed written statement contending as follows:** - The suit is not maintainable either in law or on facts. The suit is filed by suppressing material facts. It is false to state that the plaintiff is the daughter-in-law of the 1<sup>st</sup> defendant and the marriage between the plaintiff and the 1<sup>st</sup> defendant's son was solemnized on 10/05/2009 at Mahadevar Temple, Thirunakkara. It is true that said Mr.Pyarelal had died on 07/12/2017. The property having an extent of 30 cents including 10 cents described in the plaint A schedule belongs to the 1<sup>st</sup> defendant as per sale deed No.3396/74 of SRO Punalur, who had given the same to his deceased son Pyarelal by virtue of settlement deed No.3864/99 of SRO Punalur. Mr.Parelal was undergoing treatment for a long time due to kidney disease and the defendants and local volunteers had collected money for the treatment. The plaintiff is the home nurse, who came to looking after Pyarelal while he was undergoing treatment. From the property having an extent of 30 cents was given to Pyarelal, 5 cents was sold out by him. Mr. Pyarelal purchased the plaint B schedule property after obtaining a loan from the Urukunnu Service Co-operative Bank. Later, the

said loan was closed by using the money received from the sale of the above said property. The plaintiff has no right or authority over the same as she did not spend any money for the purchase of the plaint B schedule property. But in the said document the plaintiff, who nursing Pyarelal included her name as Pyarelal's wife by cheating him. The plaintiff has no right over the properties of deceased Pyarelal. The 1<sup>st</sup> defendant is the sole legal heir of the deceased Pyarelal. Deed no. 3864/99 is valid. During the life time of Pyarelal itself, the plaint C schedule property was given to the 2<sup>nd</sup> defendant. The plaintiff has no right to claim for a partition of plaint schedule properties. Hence, the suit is liable to be dismissed with costs.

4. From the above pleadings, the following issues were raised for consideration: -

- 1) Whether the plaintiff is entitled to get a share over the plaint schedule properties?
- 2) Whether the plaintiff is entitled to get a declaration, as prayed for?
- 3) Whether the plaint schedule properties are partible?
- 4) Whether the plaintiff is entitled to get a preliminary decree partitioning plaint schedule properties as prayed for? If so, what shall be the shares to be allotted to the plaintiff?
- 5) Whether the plaintiff is entitled to put in separate possession of the share so allotted?
- 6) Whether the plaintiff is entitle to get a decree of permanent prohibitory injunction, as prayed for?

7) Relief and costs?

5. When the suit was listed for trial to 14/10/2024, the defendants 1 and 2 did not appear before the court. Hence, this court ordered to proceed the suit against defendants 1 and 2 *ex-parte*.

6. From the side of the plaintiff, the plaintiff gave evidence as PW1, and Exts.A1 to A6 documents were marked.

7. Heard the learned counsel for the plaintiff. Perused all the available records.

8. **Issue Nos.1 and 2:** - To avoid repetition and for convenience, all these issues are considered together. The Hon'ble High Court of Kerala in **T. Sheeja v. C.P. Balakrishnan** reported in **2008 (4) KLJ 395** held that; *“even in a case where the defendant is set exparte, the judgment shall reflect the facts of the case and the controversy involved and tried to be settled by the court.”* Hence, this court is duty-bound to consider the controversy involved in the suit.

9. The plaintiff filed affidavit in lieu of the examination-in-chief reiterating the averments made in the plaint and gave evidence as PW1. PW1 deposed that the marriage between her and the 1<sup>st</sup> defendant's son was solemnized on 10/05/2009 at Mahadevar Temple, Thirunakkara, as per the religious rites and ceremonies. PW1 produced the marriage certificate dated 16/05/2009, and the same is marked as Ext. A1. PW1 deposed that she got reliable information on 07/08/2018 that the 1<sup>st</sup> defendant executed settlement deed No.784/2018 with respect to the plaint A schedule property in favour of the 2<sup>nd</sup> defendant, even though she does not have any right to do so. PW1 produced certified copy of the said settlement deed and

the same is marked as Ext. A2. The plaint A schedule property is devolved on the husband of PW1 as per settlement deed No.3864/1999 of Punalur SRO. PW1 produced certified copy of the said settlement deed and the same is marked as Ext. A3. The plaint B schedule property jointly devolved on PW1 and her husband, Pyarelal, as per sale deed No.929/2016 of Ezhukone SRO. PW1 produced certified copy of the said sale deed and the same is marked as Ext. A4. The land tax receipts dated 07/04/2017 is produced and marked as Ext. A5. The plaint C schedule is a Maruti Alto Car bearing registration No.KL-25-E-8298 and the deceased Pyarelal is the registered owner of the said vehicle. PW1 produced the said Certificate of Registration and the same is marked as Ext. A6. According to PW1, as she is the legally wedded wife of deceased Pyarelal, she entitled to inherit the property of the deceased Pyarelal. The marriage certificate produced from the side of the plaintiff shows that the plaintiff was the legally wedded wife of Mr. Pyarelal. Hence, the 1<sup>st</sup> defendant alone does not have any right over the plaint schedule properties. The 1<sup>st</sup> defendant has no right or authority to execute a settlement deed in favour of the 2<sup>nd</sup> defendant. The learned counsel for the plaintiff argued that PW1 is entitled to get  $\frac{1}{2}$  share over the plaint A schedule property,  $\frac{3}{4}$  share over the plaint B schedule property, by metes and bounds and for separate possession of the same and  $\frac{1}{2}$  share in the present value of the plaint C schedule property. There is nothing on record to believe the contrary. The allegations levelled against the defendants has not been answered by them. Even though the defendants set up a defence that the plaintiff is not the legally wedded wife of the

deceased, they did not care to produce any document in support of their contentions or to contest the case. In such a parlance, it can only be said that the plaintiff's case stands proved by the unchallenged evidence of PW1. This court is of the view that the plaintiff is entitled to get the reliefs as prayed for. It is to be noted that there were two applications, which were posted along with the suit, i.e., 1370/2019 and IA 1371/2019. IA 1370/2019 is filed for giving direction to the respondents to produce the plaint C schedule property before the court and IA 1371/2019 is filed to sell the plaint C schedule car in public auction. It is to be noted that it has already found that the plaintiff is entitled to get  $\frac{1}{2}$  right over the plaint C schedule property. The share of the plaintiff is made clear. As far as the above-said applications are considered, they are premature as the same is to be considered at the time of execution of the decree. Hence both the IAs are closed. 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 plaintiff can realise the costs of proceedings from the defendants. Thus, all the points are answered accordingly.

**In the result;** the suit is decreed as follows:

- a) It is hereby declared that the settlement deed no. 784/2018 of Punalur SRO is not binding on the rights of the plaintiff in the plaint schedule property.

- b) The plaint schedule properties are found partible between the plaintiff and the 1<sup>st</sup> defendants.
- c) A preliminary decree for partition of plaint schedule properties by metes and bounds is granted.
- d) The plaintiff is entitled to get 1/2 share over the plaint A schedule property,  $\frac{3}{4}$  share over plaint B schedule property and  $\frac{1}{2}$  share in the present value of the plaint C schedule property.
- e) The 1<sup>st</sup> defendant is entitled to get  $\frac{1}{2}$  share over the plaint A schedule property,  $\frac{1}{4}$  share over the plaint B schedule property, and  $\frac{1}{2}$  share in the present value of the plaint C schedule property.
- f) The 1<sup>st</sup> defendants' share shall be allotted on payment of requisite court fees.
- g) The plaintiff is at liberty to file an application for passing a final decree.
- h) 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**.
- i) Equities, if any, will be considered at the final decree proceedings.
- j) The case is listed for taking steps under Order XX Rule 18 of Code of Civil Procedure Code, 1908.

- k) The defendants are restrained from cutting and removing valuable trees from the plaint A and B schedule properties, from committing any sort of waste or mischief therein, from creating any deed or deeds with respect to the plaint schedule properties, from creating any encumbrance over the same, from inducting strangers therein, from doing any sort of constructions therein and also from using the plaint C schedule vehicle.
- l) 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 5<sup>th</sup> day of November 2024)

Sd/-  
Munsiff

### **Appendix**

#### **Witness for the Plaintiff**

PW1            14-10-2024            Sreelatha K.G

#### **Exhibits for the Plaintiff**

|    |            |                                                                                                   |
|----|------------|---------------------------------------------------------------------------------------------------|
| A1 | 16-05-2009 | Marriage Certificate issued from Thiruvithamcore Devaswam Board, Kottayam at Thirunakkara Temple. |
| A2 | 26-03-2018 | Settlement deed No.784/2018.                                                                      |
| A3 | 06-10-1999 | Certified copy of settlement deed No.3864/1999.                                                   |
| A4 | 10-06-2016 | Certified copy of sale deed No.929/2016.                                                          |
| A5 | 07-04-2017 | Original Land Tax Receipt No.1245554 issued from Edamon Village Office, Punalur Taluk.            |
| A6 | 08-10-2013 | R.C Book of Maruti Alto Car bearing Registration No. KL-25E-8298.                                 |

Id/-  
Munsiff

//True Copy//

Typed by            : Reeja Jasmine M.V  
Compared by        :

**MUNSIFF**