

IN THE COURT OF THE MUNSIFF, KARUNAGAPPALLY

Present: Smt. Dr.Amrita.T, LL.M, Ph.D, Munsiff,
Thursday 25th day of January, 2024/5th day of Pousham, 1945.

COMMON JUDGMENT IN OS.No.133/2015 & OS.No.61/2016
OS 133/2015

Between

Plaintiffs:

1. Indira, aged 85 years,
W/o Narayanan,
Koikkalethu, Alumkadavu P.O,
Ayanivelikulangara, Karunagappally.
2. Brinda, aged 58 years,
D/o Indira,
Thymoottil, Alappadu P.O,
Karunagappally.
3. Jayakrishnan, aged 55 years,
S/o Narayanan,
Chittepaddathu, Vannala P.O,
Ernakulam.
4. Jayasree, aged 52 years,
D/o indira,

Kodiveettil, Thumpoli P.O,
Pathirappally Village, Alappuzha.

5. Gopakumar, S/o Narayanan,
Aswathy Bhavan,
Kallelibhagom P.O, Kallelibhagom Village,
Karunagappally.

By Adv. K.S.Hariharaputhran.

And
Defendant:

Muktha, aged 54 years,
D/o indira,
Koyikkalethu, Alumkadavu P.O,
Karunagappally.

Party in person.

OS 61/2016

Between
Plaintiff

1. Muktha, aged 55 years,
D/o late Narayanan,
Koyikkalethu, Alumkadavu P.O,
Ayanivelikulangara, Karunagappally.

Party in person.

And

Defendants:

1. Indira, aged 85 years,
D/o late Karthiyayani,
Thymoottil, Alappadu, Cheriyaazheekal P.O,
Karunagappally.
2. Brinda, aged 58 years,
D/o indira,
- do -
3. Jayakrishnan, aged 56 years,
S/o Narayanan,
Chittepadathu, Vennala P.O,
Ernakulam.
4. Jayasree, aged 52 years,
D/o indira,
Kodiveettil, thupoli P.O,
Pathirappally Village, Alappuzha.
5. Gopakumar, S/o late Narayanan,
Aswathy Bhavanam,
Kallelibhagom P.O, Kallelibhagom Village,
Karunagappally.

By Adv.Hariharaputhran.

These suits filed under Section 26 Order VII Rule 1 of the Code of Civil Procedure. OS 133/2015 is filed for partition and separate possession. OS 61/2016 is filed for setting aside the will deed.

These suits are coming on for final hearing before me on 24/1/2024 and 25/1/2024. On 25/1/2024 the court delivered the following:

COMMON JUDGMENT

OS. No. 133/2015 is filed for partition and separate possession. OS No. 61/2016 is filed for setting aside the will deed. Defendant in OS 133/2015 is the plaintiff in OS.61/2016.

2. The averments in OS. 133/2015 run as follows: – The 1st plaintiff is the wife and plaintiffs 2 to 5 and the defendants are the children of 1st plaintiff born in her wedlock with Mr.Narayanan of Koyikkaletu Veedu. He died intestate on 23.09.1993. The plaint 'A' schedule property with a building therein belong to Late Narayanan and 1st plaintiff. They acquired it by virtue of

sale deed No.6579/1960 of Karunagappally Additional Sub Registrar Office. A family house is situating in the property and now 1st plaintiff and 1st defendant are residing in it. Therefore the 1st plaintiff has got 1/2 right over the plaint schedule property. The plaint 'B' schedule property is acquired by Narayanan by virtue of sale deed No.2442/1968 of Karunagappally SRO. During his life time he executed a will deed No.3/1986 of Addl.SRO with respect to plaint 'A' and 'B' schedule properties jointly in the name of plaintiffs and defendants. Plaint 'A' and 'B' schedule property are in the possession and enjoyment of plaintiffs and defendant, and they are entitled for share over the schedule properties. After the death of Sri.Narayanan, plaintiffs and defendant are in joint possession and enjoyment of the properties. The plaintiffs and the defendant are the only legal heirs of late Mr.Narayanan. The provisions of Hindu Law governing succession applies to them. The 1st plaintiff got 1/2 right

over the plaint 'A' schedule property as per above sale deed. Therefore she is entitled to get $\frac{1}{6}$ right over the balance property as a legal heir of late Narayanan. Thus she is entitled for $\frac{7}{12}$ right over the plaint 'A' schedule property. Plaintiffs 2 to 5 are entitled for $\frac{4}{12}$ share over plaint A schedule property. Thus plaintiffs are jointly entitled for $\frac{11}{12}$ share over plaint 'A' schedule property. The plaintiffs are entitled to get ' $\frac{1}{6}$ ' share over the B schedule property and hence are entitled for $\frac{5}{6}$ share jointly over the same. Thus plaintiffs are to be put in possession of their $\frac{11}{12}$ share over plaint 'A' schedule and $\frac{5}{6}$ share over 'B' schedule property. Several times they demanded the defendant for effecting partition of plaint schedule properties and put them in possession of their separate share. But the defendant by giving lame excuses is avoiding it. The plaintiffs lastly on 02.02.2015 made demand for partition, but she paid no attention. Hence this suit is filed.

3. The defendant filed written statement as follows: -- According to her, the 1st plaintiff is not the legally wedded wife of Sri.Naryanan. Therefore plaintiff Nos.2 to 5 are not the children born out of lawful wedlock between Narayanan and 1st plaintiff. The lawful wife of Narayanan was one Anandabhai. In that wedlock one Balachandran was born. The marriage of Anadabhai and Narayanan was never separated. Therefore the 1st plaintiff is only a concubine of late Narayanan. The defendant admit that plaint A schedule property was acquired by late Narayanan and 1st plaintiff. But it is further submitted that under the influence of 1st plaintiff only her name was included in the deed. Otherwise the 'A' schedule property was purchased using the money of late Narayanan only. Therefore the 1st plaintiff has no right over plaint A schedule property. For the past five years the defendant is living alone in the family house of plaint schedule property. It is further averred that the will deed

No. 03/1986 was not executed by Narayanan on his own volition. The same had been executed by playing fraud on him. In order to set aside the will deed in the year, 2016 she filed a suit. Only plaintiff No.2 to 5, defendant and Balachandran are the legal heirs of late Narayanan, the 1st plaintiff has no right over it. All the plaintiffs have given up their right over the property of Narayanan. This suit is filed after 22 1/2 years from the date of death of Narayanan. The plaintiffs have no prayer to get their share as per will deed. Since the plaintiffs have not taken any steps to effect the will deed within 12 years from the date of death of Narayanan, the share of the Narayanan exclusively comes into the possession of the defendant. This suit is filed in conspiracy among the plaintiffs to illegally evict the defendant from the plaintiff schedule property. Hence the suit is to be dismissed.

4. Plaint averments in OS.61/2016 is as follows: – The plaintiff and defendant Nos. 2 to 5 are children of 1st defendant and late Mr.Narayanan. 1st defendant is the 2nd wife of Mr.Narayanan and they are not legally wedded. He died on 25.09.1993. Late Narayanan and 1st defendant jointly acquired 77 cents of land and as per sale deed No.6579/60 of Karunagappally SRO. They have mutated the same in their name. For the last 22 years the plaintiff alone is living in the family house. The Narayanan has acquired 9 1/2 cents of land as per sale deed No.2442/1968 of Karunagappally SRO. Sri.Narayanan legally married one Anandhabhai, a son named Balachandran was born during that wedlock. During the period 1984 to 1985 Narayanan had memory loss and was suffering from old age sickness and paralysis on left side of the body. The 1st defendant compelled Narayanan to execute a will deed during his life time in respect of his properties. Therefore under the coercion and fraud played by 1st

defendant, Narayanan executed will deed No.13/1986 of Kruanagappally Addl. SRO. The will is executed not as per law. On 26.10.2014, the 1st and 2nd defendants came to the family house and compelled the plaintiff to sign a partition deed prepared by the defendants without plaintiffs knowledge. When plaintiff refused to sign the 3rd defendant used abusive words and attacked her. Therefore she lodged a complaint before Karunagappaly police on 26.10.2014 and got treated in Govt.Hospital Karunagappally.

5. Plaintiff was amended as per order in IA 2081/2018 dated 28.09.2018.

The amended portion as follows:-

6. The 1st defendant is not entitled to get share from the late Narayanan's property as she is not legally wedded wife of him. 'A,B,C' scheduled properties are the self acquired properties of Narayanan. Therefore 1st defendant has no right over it. The plaintiff is in exclusive possession and

enjoyment of 4.41cent and is taking usufructs from the property and is residing alone in the scheduled building. All the defendants are ousted from ABC scheduled properties which was acknowledged by them. Even Anadhabhai and her son Balachandran is ousted from A,B,C scheduled properties . Hence the suit is filed.

7. Defendants 1 to 5 filed written statement as follows: According to them, the Narayanan died on 23.09.1993. The suit to set aside the will deed is filed after 24 years. Hence it is bared by limitation. The son of Balachandran has filed OS 118/1994 in which the plaintiff herein was the 4th defendant. That case was related to plaint schedule property and validity of the will deed. The said case was decreed in favour of defendants and plaintiffs herein with respect to will deed. OS 133/2015 was filed by the defendants herein against the plaintiff for partition. And this suit is filed to counter the above suit only. They

have admitted that the late Narayanan had acquired plaint schedule properties as per sale deed. According to them, the will deed No.13/1986 is a valid one. After the execution of will deed the properties have been mutated in the name of respective parties. They denied that late Narayan has another wife and a son was born in that wedlock. They even averred that Narayanan executed the will deed in his own volition and free mind. Therefore the suit has to be dismissed.

8. On the basis of the above following points are raised for trial.

Issues in OS 133/2015

- (1). Whether the suit is bad for non-joinder of necessary parties?
- (2). Whether the plaint schedule property is partible?
- (3). If partible, what are the shares to be allotted?
- (4). Reliefs and costs.

Issues in OS 61/2016

- (1). Is the suit claim barred by limitation?
- (2). Is the will deed dated 17.12.1986 liable to be set aside?
- (3). Relief and costs.

9. As per order in IA.1457/2018 dated 19.07.2018 filed by the defendants in OS.61/2016, joint trial is allowed and OS 133/2015 will be the leading case for the purpose of recording.

10. When the case was listed for trial, defendant in OS 133/2015 were present but not ready to cross the plaintiff or to adduce evidence. Hence case was proceeded exparte.

11. To prove the plaint claim, the 3rd plaintiff in OS.133/2015 was examined as PW1 and marked Exts.A1 to A8.

12. Heard .

13. Issue Nos. (1) to (3) in OS 133/2015: For brevity and convenience these issues are considered together. The plaintiff entered the witness box and got examined as PW1. He is not cross examined by the defendant. For proving the plaint claim Ext.A1 copy of the ഒറ്റി ആധാരം No.6579/1960 dated 12.11.1960, Ext.A2 certified copy of the sale deed No.2442/1968 dated 05.08.1968, Ext.A3 copy of the വില്പന No.13/17.12.1986 , Ext.A4 is the death certificate of Narayana ,Ext.A5 certified copy of the Judgment in OS 118/94 of Munsiff Court, Karunagappally, Ext.A6 is Decree in OS 118/94 of Munsiff Court, Karunagappally, Ext.A7 is the certified copy of sale deed No.1232/1972 dated 22.05.1972, and Ext.A8 is the Death Certificate of Smt.Indira were produced. So, from the proof affidavit and documents produced, the plaintiffs have proved their claim. I am satisfied that plaint A &

B schedule properties are partible. Hence the plaintiffs are entitled to get a preliminary decree.

14. Issue No.4 in OS 133/2015 & issue No.(3) in OS.61/2016:--

In the result, OS.61/2016 is dismissed with costs and OS.133/2015 is decreed and a preliminary decree of partition passed as follows:

- (a). The plaintiffs are jointly entitled to 11/12 share over the plaint A schedule property and 5/6 share over plaint B schedule property. But, separate allotment would be given to them only on payment of necessary court fee.
- (b). Parties are directed to bear their own costs of proceedings.
- (c) In the light of the decision of the Hon'ble Supreme Court in Shub Karan Budna v. Sita Saran Budna and Others, (2009) 9 SCC 689, Final Decree Proceedings 01/2024 is initiated and the same is posted for steps therein to 28/02/2024.

(Dictated to the Confidential Assistant, transcribed and typed by him, corrected and pronounced by me in open court on this the 25th day of January, 2024)

Sd/-
Dr.Amritha.T,
Munsiff.

Appendix**Exhibits marked for the side of Plaintiff:**

- | | | |
|----|------------|---|
| A1 | 12/11/1960 | - Copy of.....No.6579/1960 of Karunagappally Sub Registry. |
| A2 | 5/8/1968 | - Certified copy of sale deed No. 2442/1968 of Karunagappally Sub Registry. |
| A3 | 17/12/1986 | - Copy ofNo.13/86 of Karunagappally Sub Registry. |
| A4 | 13/3/2020 | - Death certificate of Narayana. |
| A5 | 27/1/1996 | - Certified copy of Judgment in OS 118/94 of Munsiff Court, Karunagappally. |
| A6 | 27/1/1996 | - Decree in OS 118/94 of Munsiff Court, Karunagappally. |
| A7 | 22/5/1972 | - Certified copy of sale deed No.1232/1972. |
| A8 | 15/12/2023 | - Death certificate of Smt.Indira. |

Witness examined for the side of Plaintiff:

PW1 12/1/2024 - Jayakrishnan.

Id/-
Munsiff.

//True Copy//

Munsiff.

Typed by : Stelancy.X
Compd.by: