

**IN THE COURT OF THE SUBORDINATE JUDGE, PUNALUR**

**Present:- Smt. Suja. K.M, Sub Judge**

Thursday, the 30th day of September, 2021.

(8th day of Aswinam, 1943).

**Original Suit No. 22/2020**

**(Filed on 23-09-2020)**

**Between**

**Plaintiff:-**

Harshan.K.I,aged 69 years,  
S/o Ittaman, Ashish Nivas,  
Agasthiacodu Muri,  
Anchal Village, Punalur Taluk.

(By Adv. Sri.P.C. Sivarja Pillai)

**And**

**Defendants:-**

1. T.R Sujatha, aged 54 years,  
W/o Radhakrishna Pillai,  
Vrindavanam, Ayilara P.O,  
Ayiranalloor Village,  
Punalur Taluk.
2. Priyanka, aged 32 years,  
D/o Radhakrishna Pillai,  
Vrindavanam, Ayilara P.O,  
Ayiranalloor Village,  
Punalur Taluk.
3. Adarsh Krishnan, aged 27 years,  
S/o Radhakrishna Pillai,  
Vrindavanam, Ayilara P.O,  
Ayiranalloor Village,  
Punalur Taluk.

4. Omana Amma, aged 79 years,  
M/o Radhakrishna Pillai,  
Vrindavanam, Ayilara P.O,  
Ayiranalloor Village,  
Punalur Taluk.

(Exparte)

This Original Suit is coming on for hearing on 30-09-2021 and stood over for consideration on the same day the court delivered the following:-

### **JUDGMENT**

The suit is for partition and injunction.

2. The plaintiff's case in brief is as follows:- The 1st defendant is the wife of Radhakrishna Pillai. The defendant Nos.2 and 3 are their children. The 4th defendant is the mother of Radhakrishna Pillai. In the period of 2009-2010 the 1st defendant borrowed Rs.9,50,000/- from the plaintiff and executed and issued cheques in favour of the plaintiff for discharging the liability. The cheques were dishonoured. Consequently, the plaintiff filed O.S. No.285/2011 before the Sub Court, Kottarakkara for realization of the amount covered by the cheques. The suit was decreed in favour of the plaintiff on 11.11.2015.

3. The plaintiff/decreed holder filed execution petition as E.P. No.11/2016 against the 1st defendant. The court attached the plaint schedule property herein for realizing the decreed debt. The property originally belonged to the 1st defendant and her husband, Radhakrishna Pillai. He died in the year 2009. The 1st defendant had one-half share in the property. In the auction sale, the plaintiff herein purchased the share of the 1st defendant in the plaint schedule property. The auction sale was subsequently confirmed. The Sub Court, Kottarakkara issued sale certificate in favour of the plaintiff/ decreed holder. In the execution proceedings itself by the virtue of the order in E.A. No. 201/2019, the Amin handed over the possession of the plaint schedule property in favour of the plaintiff/ decreed holder.

4. The plaintiff demanded partition of the plaint schedule properties by metes and bounds. The defendants are not amenable for it. On 12.09.2020, the plaintiff got reliable information that the defendants tried to commit mischief in the property and to alienate the property. Hence the present suit is filed, seeking decree for the partition of the plaint schedule property in two and allotting one-half such share in favour of the plaintiff

and permanent prohibitory injunction restraining the defendants from alienating the plaint schedule property or committing any mischief therein.

5. The defendant No.4 is ex-parte. The defendant Nos.1 to 3 had not filed written statement.

6. The evidence of the plaintiff consists of the oral evidence of PW1 and the documentary evidence of Exts.A1 to A4.

7. Heard the counsel for the plaintiff. Perused the records.

8. I am satisfied that the plaintiff is the co-owner of the plaint schedule property by virtue of the Ext.A1 sale certificate No.3/2019, issued by the Sub Court, Kottarakkara. He has one-half share in the plaint schedule property. The defendants are the other co-owner of the property. They tried to alienate the plaint schedule property and commit mischief therein. Since the defendants are the co-owners of the property they are entitled to alienate their share in the property. That cannot be restricted. As far as the mischief is concerned, they are not entitled to commit mischief while the property is in the joint possession. I am further satisfied that the plaintiff demanded partition of the plaint schedule property. The defendants refused to do so. The plaintiff is entitled to get his share separated from the joint possession.

In the result preliminary decree is passed as follows:-

1. The plaint schedule property shall be divided into two equal shares by metes and bounds.
2. The plaintiff is entitled to one-half such share and the defendants are jointly entitled to the other one-half share.
3. The defendants are restrained from committing any mischief in the plaint schedule property till the separate share of the plaintiff is handed over.
4. The costs of the suit shall come out of the estate.
5. Any of the parties are at liberty to file application for passing final decree.
6. The suit is adjourned sine die.

Dictated to the confdl.asst. transcribed and typed by her and corrected and pronounced by me in the open court on this the 30th day of September 2021.

Sd/-  
SUB JUDGE

**Appendix:**

**Witness Examined for the plaintiff:-**

PW1 Harshan. K.I.                      29-09-2021.

**Witness examined for the defendant: - Nil.**

**Exhibits marked for the Plaintiff:-**

- A1              Sale Certificate No. 3/19 dated 26-07-2019.
- A2              Copy of Decree in OS No. 285/2011 dated 11-11-2015.
- A3              Copy of Judgment in OS No. 285/2011 dated 11-11-2015.
- A4              Delivery Kaicheet in EA No. 201/2019  
                    in EP No.11/2016 in OS No. 285/2011 dated 11-12-2019.

**Exhibits Marked for the Defendants:- Nil.**

**Court Exhibits :- Nil.**

Id/-  
SUB JUDGE.

//True Copy//

Typed by : Jayasree. S.

Compd by :

SUB JUDGE.