

**IN THE COURT OF THE DISTRICT JUDGE, THALASSERY**

Present: Sri. K.T. Nisar Ahammed, District Judge.

Thursday, the 26<sup>th</sup> day of March, 2026/ 5<sup>th</sup> Chaithra, 1948

**APPEAL SUIT No.46/2019**

Rajalakshmi Velluva, D/o.late Narayanan Nair, ]  
Retired Head Mistress, Aged 64, ]  
Residing at Kannoth House, Mangattidam ] Appellant/  
Amsom, Shankaranellur Desom, ] Plaintiff  
P.O.Sankaranellur, Kuthuparamba, ]  
Via.Thalassery, Thalassery Taluk. }

Vs.

1. Mundoli Velluva Devi Amma (Died) ]
2. Velluva Dharmarajan, S/o.Devi Amma, ]  
Aged 63, Clerk, Residing at Kaithachall, ]  
Mangattidam amsom desom, Near ]  
P.H.C.Nirmal Bhavan, P.O.Mangattidam, ]  
Via.Kuthuparamba. ]
3. Brother Velluva Sudhakaran, Aged 58, ]  
Police Constable, Praseetha Nivas, ] Respondents/  
Punnadu, P.O.Punnadu, Via. Iritty, Keezhur ] Defendants  
Amsom, Punnadu Desom, Iritty Taluk. ]
4. Sister Velluva Sreelatha, Aged 56, ]  
Own affairs, Residing at Sreeshylam, ]  
Vengad Theru, Paduvilayi Amsom, Vengad ]  
Desom, Via.Anjarkkandy, P.O.Vengad. ]
5. Sister Velluva Sreeja, Aged 49 years, ]  
Own affairs, Residing at Pranavam, ]  
Mangattidam Amsom Desom, ]  
P.O.Sankaranellur, Via. Kuthuparamba, ]  
Thalassery. ]
6. Brother Pramod Velluva, Aged 45 years, ]  
Driver, Residing at Koorara House, ]  
Sankaranallur Desom, Mangattidam Desom, ]  
P.O.Sankaranallur, Via. Kuthuparamba, ]  
Thalassery Taluk. ]



This appeal coming on the 12<sup>th</sup> day of March, 2026 for hearing before me in the presence of S/Sri. K.V.Pavithran, Jithin.S,Sundaran and Safeena.C.C, Advocates for the appellant, Sri.K.Viswan, Advocate for respondent Nos.2 to 4, Sri. C.P.Raveendran, Advocate for the 5<sup>th</sup> respondent, Sri. Sebastian.K.Jacob, Advocate for the 6<sup>th</sup> respondent, S/Sri.K.Mukundan and P.E.Suresh Babu, Advocates for respondent Nos.7 to 10, and the 1<sup>st</sup> respondent being reported dead pending the appeal, and having stood over for consideration till this day, the Court delivered the following:-

### **J U D G M E N T**

Appeal against the judgment and decree passed by the Sub Judge, Thalassery dated 28.02.2018 in OS.58/2009.

2. The plaintiff is the appellant. She filed OS.58/2009 for partition of Plaintiff A and B schedule properties. The trial court as per the impugned judgment, allowed the partition of the Plaintiff A schedule properties and rejected the prayer of partition of Plaintiff B schedule property. So, she filed the present appeal against the rejection of the prayer to partition Plaintiff B schedule property.

3. The facts in brief are as follows:-

The Plaintiff B schedule property belongs to Appan Nambiar, the father of the 1<sup>st</sup> defendant. The defendants 2 to 6 and one late Pradeepan are the other children of the 1<sup>st</sup> defendant. The defendants 7 to 10 are the wife and children of Pradeepan. Appan Nambiar gifted the Plaintiff B schedule property along with the other items of the property to the 1<sup>st</sup> defendant and her two sisters to be enjoyed as Thavazhi property. Later, the 1<sup>st</sup> defendant and her two sisters partitioned the property as per partition deed No.1918/1954 of SRO,

Kuthuparamba dated 18.08.1954 and item No.8 of the Partition Deed was allotted to the thavazhi of the 1<sup>st</sup> defendant and that is the plaint B schedule property. In the property, the plaintiff and defendants have constructed a house. The intention of Appan Nambiar was that the gifted properties should be enjoyed as thavazhi property. The plaintiff and defendants 1 to 6 and late Pradeepan are members of the thavazhi of the 1<sup>st</sup> defendant. So, along with the plaint A schedule property, the plaintiff prayed for partition of the plaint B schedule property. She is entitled to get 1/8 share. The defendants 2 to 6 entitled for 1/8 share each. The defendants 7 to 10 the legal heirs of Pradeepan are entitled for the remaining 1/8 share. Hence, the plaintiff prays for partition of the plaint A and B schedule properties and to allot 1/8 share to them. Regarding the plaint A schedule property, as there was no dispute and challenge, the facts are not relevant in this appeal, hence not reproduced.

4. The defendants 1 and 6 filed written statement and contended as follows: The plaint B schedule property was given to the 1<sup>st</sup> defendant and her two sisters by their father Appan Nambiar along with other properties. Later, the 1<sup>st</sup> defendant and sisters partitioned their properties and as item No.8 in the partition deed, the plaint B schedule was allotted to the 1<sup>st</sup> defendant. It is the exclusive property of the 1<sup>st</sup> defendant. It is not a thavazhi property and it is not partible. Regarding the thavazhi properties, the plaintiff had already filed OS.131/77 and the properties were already partitioned. So, the plaint A schedule can be partitioned and plaint B schedule cannot be partitioned.

5. The defendants 2 to 4 filed written statement in tune with the contentions of defendant Nos.1 and 6. They have contended that

plaint B schedule is the exclusive property of the 1<sup>st</sup> defendant. It is not a thavazhi property and not available for partition.

6. The defendants No.7 to 10 have also filed written statement in tune with the contentions of defendant Nos.1 and 6. They have contended that the plaint B schedule is the absolutely property of the 1<sup>st</sup> defendant and it is not available for partition. It is not a thavazhi property.

7. The defendant No.5 filed a separate written statement and contended that plaint B schedule is not available for partition. The plaintiff has no right over the plaint B schedule. The plaint B schedule is the absolute property of the 1<sup>st</sup> defendant. It is not a thavazhi property. Out of the 88 cents of property in plaint B schedule, 78 cents excluding the house and the remaining property was gifted to the 5<sup>th</sup> defendant by defendant No.1 as per document No.171/1994. The 1<sup>st</sup> defendant has only life interest on the property to take the usufructs. The plaint A schedule alone is available for partition. 78 cents in the plaint B schedule belongs to her. The remaining 10 cents and the house absolutely belongs to the 1<sup>st</sup> defendant. The 1<sup>st</sup> defendant is still alive and so that property is not available for partition.

8. Based on the pleadings, the trial court raised the following issues.

1. Whether the gift deed registered as document No.171/1994 of SRO, Kuthuparamba has been accepted by D5 or acted upon by him?

2. Whether the said gift deed (Document No.171/94 of SRO, Kuthuparamba) is a sham document.

Additional issues:

1. Whether the plaint schedule properties are partible, if so what is the shares of the parties?

2. Equities and reservations?

3. Relief and cost?

9. The plaintiff was examined as PW.1 and marked Exts.A1 to A14. Defendant No.1 and Defendant No.5 were examined as Dws.1 and 2 and marked Exts.B1 to B19. One document is marked as Court exhibit, Ext.C1. Ext.A10 was marked subject to proof. The plaintiff did not adduce any evidence to prove Ext.A10. Hence, stands not proved. Then, after hearing both sides, as per the impugned judgment, the learned Sub Judge decreed the suit in part, allowing partition of plaint A schedule property into 8 equal shares. The trial court rejected the prayer of partition of plaint B schedule property.

10. Aggrieved by the above judgment and decree, the plaintiff filed the present Appeal on following grounds.

The impugned judgment and decree is against law and weight of evidence. The trial court did not frame an issue whether the plaint B schedule is a thavazhi property or not. So, the finding of the trial court that the plaint B schedule property is not a thavazhi property is not correct. The trial court ought to have decreed the suit by ordering partition of B schedule property as a thavazhi property gifted by Appan Nambiar, father of the 1<sup>st</sup> defendant in favour of the 1<sup>st</sup> defendant and her two sisters. The trial court went wrong in holding that in Ext.A8 gift deed, Appan Nambiar has not mentioned that it should be enjoyed as a thavazhi property. The documents produced by the plaintiff, i.e. the Wills executed by Appan Nambiar,

one can see that Appan Nambiar intended to create thavazhi as per Ext.A8. Those Wills were not marked. The trial court ought to have held that after partition of the property in 1954 by the 1<sup>st</sup> defendant and her two sisters, the plaint B schedule was enjoyed by the 1<sup>st</sup> defendant and her children as the thavazhi property. The house in plaint B schedule was constructed by using thavazhi funds. The trial court went wrong in holding that, the plaintiff took a contention in OS.131/1977 that the property assigned by the 1<sup>st</sup> defendant , i.e. the plaint B schedule is not a thavazhi property and the court rejected the contention and decreed for partition by holding that it is a thavazhi property and now, in the present suit, the plaintiff is taking a contrary contention that plaint B schedule is a thavazhi property. The defendant raised this contentions only to confuse the court. The trial court went wrong in holding that plaint B schedule is the absolute property of the 1<sup>st</sup> defendant. In fact, the 1<sup>st</sup> defendant obtained Purchase Certificate on behalf of other thavazhi members. The finding of the trial court that out of the plaint B schedule, 78 cents of land was gifted to the 5<sup>th</sup> defendant by the 1<sup>st</sup> defendant and it is acted upon is not correct. The 1<sup>st</sup> defendant had no right to execute a gift deed. The trial court ought to have decreed the suit by ordering partition of plaint B schedule property as well. Hence, the appellant prays for allowing this appeal.

11. Notice issued to the respondents. The trial court records were called for.

12. While this appeal was pending, the 1<sup>st</sup> defendant reported dead. Defendant No.5 has put forward a Will alleged to have been executed by defendant No.1, whereby the 1<sup>st</sup> defendant bequeathed her properties to her. Then, as provided under Order XXII Rule 5 of

CPC, as per the order dated 20.11.2023, the trial court was directed to determine the question as to the legal representative of the 1<sup>st</sup> defendant. The trial court as per the order in IA.1/24 dated 17.02.2024, determined that as far as item No.4 of plaint A schedule property was concerned, plaintiff, defendant No.2 to 6 and 8 to 10 are the legal representatives of the 1<sup>st</sup> defendant. Regarding Item Nos.1 to 3 of plaint A schedule, defendant No.5 is the legal representative as per the registered Will No.125/2017 of SRO, Kuthuparamba.

13. Heard both sides.

14. Now the points that arise for consideration are:

1. Whether the plaint B schedule is a thavazhi property?
2. Relief and cost ?

15. **Point No.1 :-** Here, the appellant/plaintiff filed the suit for partition of plaint A and B schedule properties. The trial court has decreed the suit in part and ordered partition of plaint A schedule, but rejected the prayer for partition of plaint B schedule property by holding that it is not a thavazhi property and it absolutely belongs to the 1<sup>st</sup> defendant. 78 cents of the plaint B schedule property already gifted by defendant No.1 to the defendant No.5 as per Ext.A9 Settlement Deed. Defendant No.1 had contended that Ext.A9 is a sham document and it was never acted upon and as per Ext.A10, she had already cancelled Ext.A9 gift deed. The plaintiff also contended that Ext.A9 is a sham document. But, the trial court held that Ext.A9 is valid and it was acted upon. 78 cents out of plaint B schedule belongs to defendant No.5 and defendant No.1 is having only a balance of 10 cents and the house therein. As defendant No.1 was

alive, there is no question of partition of the 10 cents. Hence, the trial court rejected the prayer for partition of the plaint B schedule. Aggrieved by the same, the plaintiff filed the present appeal. As regards plaint A schedule, there is no dispute and there is no challenge of the partition ordered by the trial court. Now, we are concerned only with the plaint B schedule and question to be decided is, whether plaint B schedule is a thavazhi property or not.

16. The learned counsel for the appellant/plaintiff has submitted that on going through Ext.A8 gift deed(1149/1941) executed by late Appan Nambiar, father of the 1<sup>st</sup> defendant, one can see that it was gifted to the 1<sup>st</sup> defendant and two of her sisters as thavazhi property. The learned counsel has submitted that at the time of Ext.A8, the wife of Appan Nambiar and other children were alive. Excluding them, Appan Nambiar executed Ext.A8 only in favour of three daughters, i.e defendant No.1 Devi Amma, Madha and Lakshmi. So, according to the learned counsel, on a plain reading of Ext.A8 itself and from the above circumstance, one can hold that the intention of Appan Nambiar was for creating a thavazhi and the property was gifted for enjoyment as thavazhi property by defendant No.1 and two of her sisters. It is the self-acquired property of Appan Nambiar. The recitals in Ext.A8 would go to show that the property is to be enjoyed by his three daughters as co-owners. After the Marumakkathayam Act of 1958, as per Ext.B1 partition deed, the 1<sup>st</sup> defendant and her two sisters partitioned the property and plaint B schedule was set apart to the 1<sup>st</sup> defendant as thavazhi property. Going by Section 48 of the Act, there is a presumption in favour of thavazhi property. Going by the judgment in OS.131/1977, the Court held that it is a thavazhi property. The learned counsel further submitted that Ext.A9 gift deed executed

by the 1<sup>st</sup> defendant in favour of defendant No.5 was later cancelled by the 1<sup>st</sup> defendant as per Ext.A10, cancellation deed. The Will put forward by the defendant No.5 is not a genuine will. Hence, the learned counsel prays for allowing this appeal and to order partition of plaint B schedule into 8 equal shares.

17. The learned counsel for the 5<sup>th</sup> respondent/5th defendant who is the only contesting party has submitted that there is absolutely no illegality or impropriety in the impugned judgment. The dispute is only regarding plaint B schedule, as to whether it is a thavazhi property or exclusive property of the 1<sup>st</sup> defendant. As per Ext.A8 gift deed, Appan Nambiar, father of the 1<sup>st</sup> defendant gifted the property to her and two of her sisters along with other properties. In Ext.A8, it was not stated that it was for thavazhi. The word used is 'co-ownership'. If the intention of Appan Nambiar was to create a thavazhi, it would have stated that 'it is for you and your children'. Admittedly, at the time of Ext.A8, mother of the 1<sup>st</sup> defendant and other siblings were alive. If that be so, there is no chance of Appan Nambiar executing Ext.A8 to create a thavazhi by excluding the mother and other children. Ext.B19 document was executed by three daughters of Appan Nambiar, i.e, the 1<sup>st</sup> defendant, Madha and Lakshmi. There also, the recitals would go to show that they were holding the property as co-owners and they decided to partition the property and accordingly, the item No.8 in Ext.B1 was allotted to the 1<sup>st</sup> defendant, i.e. the plaint B schedule property. If it was a thavazhi property, it would have been mentioned in Ext.B1 that it is allotted to thavazhi of the 1<sup>st</sup> defendant. On a mere perusal of Ext.A8 and B1, one can see that the plaint B schedule is not a thavazhi property and it is the absolute property of the 1<sup>st</sup> defendant. The subsequent conduct

of the parties also would go to show that it is not a thavazhi property. The 1<sup>st</sup> defendant obtained Ext.B3 purchase certificate in her favour. As per Ext.B3, the 1<sup>st</sup> defendant is the absolute owner of plaint B schedule property and it is conclusive proof. Ext.B3 was not challenged so far. In Ext.B5, Kuzhikanam Assignment Deed, it is clearly stated that the property obtained as per partition deed. Ext.B5 also not challenged. The learned counsel has submitted that, none of the children of the three daughters came with a claim of thavazhi. The 1<sup>st</sup> defendant already gifted 78 cents of land in plaint B schedule to the 5<sup>th</sup> defendant as per Ext.A9 settlement deed. So, the plaint B schedule is not a thavazhi property. It absolutely belongs to the 1<sup>st</sup> defendant, out of which, 78 cents already gifted to the 5<sup>th</sup> defendant and 5<sup>th</sup> defendant is the owner and in possession of 78 cents of land in plaint B schedule. In Ext.A9, there is clear recital of giving possession to the 5<sup>th</sup> defendant. The subsequent cancellation deed Ext.A10 is not valid. So, the 1<sup>st</sup> defendant is the absolute owner and in possession of 78 cents of land in plaint B schedule. The trial court has correctly appreciated the evidence and came to right conclusion and rejected partition of B schedule. The appeal is liable to be dismissed. While pending the appeal, the 1<sup>st</sup> defendant died. She had executed a registered Will and bequeathed her entire properties to the 5<sup>th</sup> defendant. The learned Sub Judge has already found that the 5<sup>th</sup> defendant is the legal representative of the 1<sup>st</sup> defendant with regard to item Nos.1 to 3 of plaint A schedule. As per the Will, the 1<sup>st</sup> defendant had bequeathed her right (6/40) in properties to the 5<sup>th</sup> defendant. So, now, as regards plaint A schedule, the plaintiff/appellant is entitled for 5/40 share in item No.1 to 3, defendants Nos.2 to 4 & 6 are entitled for 4/40 share each. Defendant

No.5 is entitled for 11/40 share and the respondents 7 to 10/defendants 7 to 10 the legal heirs of late Pradeepan are entitled for 4/40 share. With regard to item No.4 in plaint A schedule, appellant is entitled for 41/280 share, defendants 2 to 6 are entitled for 41/280 share each and defendants 7 to 10 are entitled for 34/280 share. As the 1<sup>st</sup> defendant was not having any subsisting right on plaint B schedule at the time of her death, plaint B schedule is not partible.

18. Here, I find merit in the submission of the learned counsel for the 5<sup>th</sup> defendant. In the impugned judgment, the trial court has applied the correct law regarding the thavazhi by relying on the ruling reported in 1962 KLT 234 (Chiruda @ Kallyani vs. Anandan), 1958 KLT 516 (Nangali Amma vs. Krishnan Nambesan) and 1986 KLT 944 (Sarojini Amma vs.Aboobakar). The trial court has held that the plaint B schedule is the absolute property of the 1<sup>st</sup> defendant and it is not a thavazhi property. Out of which, as per Ext.A9, she had gifted 78 cents of land to the 5<sup>th</sup> defendant and the 5<sup>th</sup> defendant is the absolute owner and in possession of the above 78 cents of land. So, the 1<sup>st</sup> defendant was having only a balance of 10 cents of land. As the 1<sup>st</sup> defendant was alive, it was not available for partition.

19. The learned counsel for the appellant invited my attention to the ruling reported in **2007 KHC 451 Thazhath Valappil Prasanth v. Kalliani and Others** and submitted that there is a presumption in favour of thavazhi. As per the Marumakkathayam Law, when the property is given by gift or bequest by Marumakkathayi male member in favour of niece and grandnieces, unless specified otherwise, it can be taken only as a bequest in favour of their thavazhi. There, the Hon'ble High Court has held in Paragraph -19 as follows:

“The question whether there is a presumption under marumakkathayam law that the property given by husband to his wife and children or to his wife alone or to one or more of his children or the property given by an uncle to the niece or nieces, is a gift to the thavazhi has come up for decision before various courts. S.48 of Madras Marumakkathayam Act which came into force on 01-8-1933, set at rest the question. Where a Marumakkathayi male bequeaths or makes a gift of any property or purchase any property in the name of his wife alone or his wife and one or more of his children by such wife together, such property is to be taken as thavazhi property by the wife, her sons and daughters by such person and the lineal descendants of such daughters on the female line unless a contrary intention appears from the Will or deed of gift. Apart from provisions of Marumakkathayam Act, there has always been a presumption with regard to the gift by the father to the wife and the children to be enjoyed in the female line or when a gift or bequeath is made in the name of niece or grandnieces, that the gift is for the thavazhi.”

20. I am not inclined to accept the above submission of the learned counsel because, in the same ruling, the Hon'ble High Court has held that, “the question whether the gift or bequest is for the benefit of the donees individually or shall enure to the thavazhi is to be resolved on the intention of the donor or the testator. It is further held that, in the absence of specific stipulation that, it is for the donees or the persons mentioned in the Will individually and as tenants in common, the normal presumption in consonance with the ordinary ideas and notions of people following Marimakkathayam Law is that the intention of the donor or the testator was that donees or the persons to whom the bequest is made shall hold the properties

with all the incidents of tarwad property attached to it.” So, one can see that the question is to be decided based on the intention of the donor.

21. The learned counsel for the 5<sup>th</sup> defendant has invited my attention to the ruling reported in **1974 ICO 759 Seetha & Ors.vs. Krishnan & Ors** and submitted that the presumption arises only when gift or acquisition is made in favour of a marumakkathayee woman and all her children or in the names of all the children who thereby constitute a thavazhi. Here, admittedly, at the time of Ext.A8, mother as well as other children are alive. Appan Nambiar executed Ext.A8 gift deed only in favour of his daughters the 1<sup>st</sup> defendant and her two sisters. So, the argument was that there is no presumption in favour of the thavazhi. I find merit in the above submission. In Paragraph 23 of the above said Judgment, the three member Bench of the Hon’ble High Court has held that;

“23. The conclusion that emerges from the foregoing discussion is that under the rules of customary marumakkathayam law which were applicable in Malabar prior to the introduction of the Madras Marumakkathayam Act, it is only in cases where the gift or acquisition is made in favour of a marumakkathayee woman and all her children or in the names of all the children who by themselves constitute a tavazhi (the mother being dead) that a presumption would arise that the acquisition is for the benefit of the tavazhi. There is no scope for raising any such presumption in cases where the gift, bequest or acquisition is in favour of the wife alone or of the wife and some of the children alone leaving out the others. The underlying principle is that the presumption would be attracted only in cases where the transaction is in favour of all the members of a group who constitute a

natural tavazhi capable of acquiring and holding property.” So, going by the above ruling, one can see that here, the above presumption is not available.

22. The learned counsel for the 5<sup>th</sup> defendant has also invited my attention to the ruling reported in **1958 KLT 547 Cheetha Alias Ammukutty v. Sankarankutty Nair** and submitted that a thavazhi cannot be created by act of parties. Here, the plaintiff/appellant claims that by executing Ext.A8 gift deed, Appan Nambiar created a thavazhi of the 1<sup>st</sup> defendant and her two other sisters, it is contrary to Law. I find merit in the above submission. In the ruling cited above, the Division Bench of the Hon’ble High Court has held that, “A thavazhi any more than a tarwad cannot be created by act of parties. A group of persons following marumakkathayam law may hold property jointly as any other group may do but they do not thereby become a thavazhi and such property does not get the incidents of tarwad property attached to it.”

23. The learned counsel for the appellant has also invited my attention to Sec.48 of Marumakkathayam Act and submitted that there is a presumption in favour of the thavazhi. Section 48 reads as follows:

Construction of bequests, gifts, etc., to wife or wife and children.

“48.- Where a person bequeaths or makes a gift of any property to, or purchases any property in the name of, his wife alone or his wife and one or more of his children by such wife together, such property shall, unless a contrary intention appears from the will or deed of gift or purchase or from the conduct of the parties, be taken as tavazhi

property by the wife, her sons and daughters by such person and the lineal descendants of such daughters in the female line:

Provided that, in the event of partition of the property taking place under Chapter VI, the property shall be divided on the stirpital principle, the wife being entitled to a share equal to that of a son or a daughter.”

24. But, going by the above section, one can see that the presumption arises only when the property was a gifted or purchased in the name of his wife alone or his wife and one or more of his children by such wife together. Such property shall, unless a contrary intention appears from the will or deed of gift or purchase or from the conduct of the parties, be taken as tavazhi property by the wife, her sons and daughters. First of all, the main requirement was gift or purchase in the name of wife alone or in the name of wife and one or more of his children. Here, Ext.A8 gift deed was not in favour of the wife. It was given in favour of three daughters. Secondly, by the conduct of the parties, i.e. the 1<sup>st</sup> defendant and her sisters Madha and Lakshmi, one can see that it is not a thavazhi property. They partitioned the property as per Ext.B1, wherein it is clearly stated that they were in co-ownership of the property as gifted by their father Appan Nambiar. So, in my view, at any stretch of imagination it cannot be said that there is a presumption in favour of thavazhi in Ext.A8 gift deed.

25. Here, as rightly held by the trial court, going by documents Exts.A8, B1, B3, B17 and B19, one can see that it was never intended that the plaint B schedule to be enjoyed as thavazhi property. As rightly pointed out by the learned counsel for the 5<sup>th</sup> defendant, after Ext.B1 partition, the 1<sup>st</sup> defendant obtained purchase certificate

Ext.B3. As per Ext.B3, the 1<sup>st</sup> defendant is the absolute owner of the property. Ext.B3 is the conclusive proof regarding the ownership of the property. Ext.B3 was not challenged by the plaintiff so far. So, I am of the opinion that the trial court was perfectly right in holding that the plaint B schedule is not a thavazhi property.

26. Another challenge was regarding Ext.9 gift deed by the 1<sup>st</sup> defendant in favour of the 5<sup>th</sup> defendant. The argument was that Ext.A9 never intended to be acted upon. It is a sham document. The possession was not given or taken by the 5<sup>th</sup> defendant. No mutation effected. Moreover, as per Ext.A10, the 1<sup>st</sup> defendant already cancelled Ext.A9 gift deed. So, the argument of the learned counsel for the appellant was that the trial court went wrong in holding that the 5<sup>th</sup> defendant is the absolute owner and in possession of 78 cents of land in the plaint B schedule. But, the learned counsel for the 5<sup>th</sup> defendant has submitted that Ext.A9 is a valid gift and it came into effect. Even if there is no actual transfer or possession when there is a specific recital in the document, it is sufficient. Simply because mutation is not effected, it cannot be said that the document never came into effect. The learned counsel also submitted that a unilateral cancellation of gift deed is bad in Law. I find merit in the submission of the learned counsel for the 5<sup>th</sup> defendant. The learned counsel has invited my attention to the ruling reported in **2014 (3) KLJ 522 Renikuntla Rajamma (Dead) By Lrs vs. Sarwanamma**. There, the Hon'ble Supreme Court has held that; "A conjoint reading of Sections 122 and 123 of the Act makes it abundantly clear that "transfer of possession" of the property covered by the registered instrument of the gift duly signed by the donor and attested as required is not a sine qua non for the making of a valid gift under the provisions of

Transfer of Property Act, 1882.” So, going by the above ruling, it is crystal clear that delivery of possession is not an essential condition for a valid gift under the TP Act.

27. The learned counsel has also invited my attention to the ruling reported in **2008 (1) KLT 54 SC Ashokan vs. Lakshmikutty**. There, the Hon’ble Supreme Court by relying on the ruling in 2006 (2) KLT 863(SC) has held that;

“It is settled law that where the deed of gift itself recites that the donor has given possession of the properties gifted to the donee, such a recital is binding on the heirs of the donor. It is an admission binding on the donor and those claiming under him. Such a recital raised a rebuttable presumption and is ordinarily sufficient to hold that there was delivery of possession.”. There, the Hon’ble Supreme Court has further held that, the Court has to consider the relationship between the parties. When parents executing gift deeds in favour of son or daughter, it is not necessary to prove any overt act in respect of acceptance. Here, mother, the 1<sup>st</sup> defendant executed Ext.A9 gift deed in favour of her daughter the 5<sup>th</sup> defendant. So, the above ruling of the Hon’ble Supreme Court squarely applies to this case.

28. The learned counsel for the 5<sup>th</sup> defendant has also invited my attention to the ruling reported in **2010 (3) KLT SN 10 (C.No.13) Ambujakshyamma v. Kesavan Kamalasanan, 2010 (4) KLT SN 25 (C No.28) Vijayalakshmi vs. Gopalakrishna Menon and 2009 (3) KLT 753 Bini Anilkumar v. Bhaskaran** and submitted that when a gift is not onerous, only slight evidence is sufficient for its acceptance. In the above rulings the Hon’ble High Court has repeatedly held that, when the gift is not onerous, only slight evidence is sufficient to prove its acceptance. Here, in this

case, DW2 has given evidence before the court that the 1<sup>st</sup> defendant executed Ext.A9 gift deed and given 78 cents of land out of the plaint B schedule to her. She accepted the gift and taken possession of the property.

29. The learned counsel for the 5<sup>th</sup> defendant has further submitted that here, the appellant is relying on Ext.A10, the cancellation deed alleged to have been executed by the 1<sup>st</sup> defendant whereby she has cancelled Ext.A9. But unilateral cancellation of a gift deed by the donor is not valid. The learned counsel has relied on the ruling reported in **2024 (4) KHC 339 Kakkoth Radha v. Bathakkathalakkal Batlak Musthaffa** where the Hon'ble High Court has held that, "In the absence of any right for revocation of deed in the deed itself, unilateral execution of the cancellation of deed to cancel the gift deed is bad in law and legally unsustainable." There, the Hon'ble High Court has further held that, "Mutation was not effected immediately after the execution of the gift deed in favour of donee does not have much significance. So, going by the above rulings of the Apex Court and the High Court, one can see that here in this case, the trial court was right in holding that Ext.A9 is valid, accepted and came into effect, and 78 cents of land in the plaint B schedule belongs to the 5<sup>th</sup> defendant and she is the absolute owner and in possession of the same.

30. The trial court has found that the balance 10 cents of land and the house therein belongs to the 1<sup>st</sup> defendant, and as she was alive, that is not available for partition. But, during the pendency of the appeal, the 1<sup>st</sup> defendant died. Here, the 5<sup>th</sup> defendant came with a case of the 1<sup>st</sup> defendant executing a registered Will 125/2017 of SRO, Kuthuparamba wherein she had bequeathed her entire property

to the 5<sup>th</sup> defendant. Then, the question of legal representative of the 1<sup>st</sup> defendant arises and accordingly, as per the order dated 20.11.2023, this Court directed the trial court to determine that aspect as provided under Order XXII Rule 5 of CPC. Accordingly, as per the order dated 17.02.2024 in IA.01/204 in OS .58/2009, the trial court has held that the above said Will executed by the deceased 1<sup>st</sup> defendant is valid and wherein her right in Item No.1 to 3 in plaint A schedule were bequeathed to the 5<sup>th</sup> defendant. On the death of the 1<sup>st</sup> defendant, will came into effect and her right in the property Item No.1 to 3 devolved upon the 5<sup>th</sup> defendant as legal representative. So, it is evident that the 1<sup>st</sup> defendant executed a Will and on her death it came into effect. As per the Will, her right in the plaint A schedule property Item No.1 to 3 , devolved upon the 5<sup>th</sup> defendant. But, it is pertinent to note that going by the said Will, the 5<sup>th</sup> defendant is only entitled for the property covered in item No.1 to 3 of the plaint A schedule i.e, 6/40 share of the 1<sup>st</sup> defendant. It is pertinent to note that the 1<sup>st</sup> defendant has not included the remaining 10 cents in the plaint B schedule in the said Will. So, one can see that as per the Will, the 5<sup>th</sup> defendant gets only her share in the item No.1 to 3 in the plaint A schedule. Regarding the 10 cents of land and the house in plaint B schedule, along with the 5<sup>th</sup> defendant, others are also entitled for a share. Now, the above 10 cents of land and the house therein in plaint B schedule is also available for partition.

31. So, from the above discussions, I hold that there is absolutely no illegality or impropriety in the impugned judgment. The plaint B schedule is not a thavazhi property, it was the absolute property of the 1<sup>st</sup> defendant. After execution of Ext.A9, 78 cents of the plaint B schedule belongs to the 5<sup>th</sup> defendant. The remaining 10

cents and the house therein belongs to the 1<sup>st</sup> defendant and is now available for partition. Admittedly, Plaintiff, D2 to 6 are the children of D1 and D7 to 10 are the wife and children of deceased Pratheepan son of D1. All are entitled for equal share in the property. So, Plaintiff & D2 to D6 are entitled for 5/35 share each and D7 to 10 together entitled for 5/30 share in the above 10 cents and the house in Plaint B Schedule.

32. After the death of the 1<sup>st</sup> defendant, and in view of the Will, there is change of shares entitled by the parties with regard to plaint A schedule. As regards plaint A schedule, the plaintiff/appellant is entitled for 5/40 share in item No.1 to 3, defendants Nos.2 to 4 & 6 are entitled for 4/40 share each. Defendant No.5 is entitled for 11/40 share and the respondents 7 to 10/defendants 7 to 10, the legal heirs of late Pradeepan are entitled for 4/40 share. With regard to item No.4 in plaint A schedule, appellant is entitled for 41/280 share, defendants 2 to 6 are entitled for 41/280 share each and defendants 7 to 10 are entitled for 34/280 share. So, the point is answered against the appellant.

33. **Point No.2:** In view of my finding on point No.1, the appeal is dismissed. The impugned judgment and decree is hereby confirmed. In view of the death of the 1<sup>st</sup> defendant and execution of the Will, the following order is passed regarding the shares entitled by the parties and partition of plaint A Schedule and 10 cents of land and the house therein in Plaint B schedule. So, the Plaint A schedule property and 10 cents and the house therein in plaint B schedule property will be partitioned by metes and bounds.

The appellant/plaintiff is entitled for 5/40 share in plaint A schedule property, item No.1 to 3, The defendants Nos.2 to 4 & 6 are

entitled to get 4/40 share each. The defendant No.5 is entitled for 11/40 share and the defendants 7 to 10 entitled for 4/40 share. With regard to item No.4 in plaint A schedule, appellant is entitled for 41/280 share, defendants 2 to 6 are entitled for 41/280 share each and defendants 7 to 10 are entitled for 34/280 share. Appellant/Plaintiff & D2 to D6 are entitled for 5/35 share each and D7 to 10 together are entitled for 5/30 share in the above 10 cents and the house in Plaint B Schedule. By considering the facts and circumstances, the parties are directed to bear their respective costs.

(Dictated to the Confidential Assistant transcribed and typed by her, corrected and pronounced by me in open Court, this the 26<sup>th</sup> day of March, 2026).

**Appendix:-**Nil

Typed by :Bhagyarajan.C

Compared by : Manjush.C

Sd/-  
**DISTRICT JUDGE**  
Sd/-  
**DISTRICT JUDGE**

Fair/Copy of Judgment  
in A.S.No.46/2019  
Dated: 26.03.2026