

IN THE COURT OF THE MUNSIFF OF KANNUR

Present: Sri.Manikandan.C.K, Principal Munsiff, Kannur,
Tuesday, the 31st day of March, 2026 (10th Chaithra, 1948)

ORIGINAL SUIT No.127/2024

Sathi P.K, D/o.Late Neeliyakathottu Gopalan	]	
Nambiar, aged 53 years, Mullikkottu House,	]	Plaintiff
Mololam Temple, P.O.Azhikode, 670009.	]	

Vs.

- | | | |
|--|---|------------|
| 1. Sajeevan.P.K, S/o.Late Gopalan Nambiar, aged |] | |
| 55 years. |] | |
| 2. Rathnavalli.P.K, W/o.Late Gopalan Nambiar, |] | Defendants |
| aged 75 years, both are residing at Neeliyakathu |] | |
| House, P.O.Azhikode, Near Pokyaram Temple, |] | |
| Kannur District, 670009. |] | |

This Suit coming on this day for hearing before me in the presence of Sri.Manoj Kumar K.V, Advocate for the plaintiff; Sri.Haridas Thaikkandy, Advocate for defendants and the court delivered the following:

J U D G M E N T

Suit for partition.

2. Gist of the plaint averments are as follows:- The plaint schedule property was belonged to Neeliyakathottu Gopalan Nambiar as per partition deed No.451/1971. Gopalan Nambiar died on 11-12-2008. After the death of Gopalan Nambiar item No.4 of above said deed was devolved upon his legal heirs i.e., the plaintiff and the defendants. The plaintiff and defendant

No.1 are the children and defendant No.2 is the wife of Gopalan Nambiar. The defendants were residing in the house situated in the plaint schedule property. After the death of Gopalan Nambiar, mesne profit of entire plaint schedule property has been taken by the defendant No.1. The plaintiff has been suffering from several health problems. Several times the plaintiff demanded for the partition of the property, which was denied by the defendants. Thereafter on 8-2-2024, the plaintiff issued lawyer notice to the defendants by demanding the partition of the plaint schedule property. But on 20-2-2024 the notice was returned as 'unclaimed'. The plaintiff no longer wish to enjoy the property jointly and is to be partitioned. Now the plaintiff convinced that she could not partition the plaint schedule property without the intervention of this court. Hence this suit.

3. The defendants entered appearance and filed written statement contending as follows:- The defendants deny all the material allegations and averments made in the plaint except those which are specifically admitted hereunder. The suit is not maintainable either in law or on facts. It is admitted that the plaint schedule property was belonged to Neeliyakathoottu Gopalan Nambiar as per partition deed No.451/1971, that the said Gopalan Nambiar died on 11-12-2008 and on his death item No.4 of the schedule property to that deed devolved upon the plaintiff and the defendants, being his wife and children and sole legal heirs. The defendants are residing in the house situated in the plaint schedule property. The defendants are having undivided 2/3 shares of right in the suit property with right of reservation in

the house building situated in the suit property. The valuation shown in the plaint is incorrect. The defendants did not receive any lawyer notice from the plaintiff and the defendants are unaware as to the sending of lawyer notice as alleged in the plaint. The defendants are ready and willing to partition the suit property but the plaintiff was not amenable for equitable partition. But demanded to sell the suit property to third party for which the defendants were not ready as the defendants are not having any other house to occupy. Hence this court may be pleased to pass appropriate decree in the above suit with cost to the defendants.

4. The following issues were framed for trial:-

1. Whether the plaint schedule property can be divided into 3 equal shares?
2. Whether the plaintiff is entitled to get share of profits from the defendant No.1?
3. Whether the defendant No.1 is entitled to get reservation over the house in the plaint schedule property?
4. Reliefs and costs?

5. From the side of the plaintiff, PW1 was examined and Exts.A1 to A4 were marked. 5th document is photocopy. Hence 5th document is not marked. No oral or documentary evidence was adduced and produced from the side of the defendants

6. Heard both sides. Notes of argument filed by the counsel for the plaintiff.

7. **Issue Nos.1 to 3:-** These issues are considered together for the sake of convenience. It is not in dispute that the plaintiff and defendant No.1 are the children and defendant No.2 is the wife of deceased Gopalan Nambiar. It is not in dispute that the plaint schedule property was belonged to Gopalan Nambiar by virtue of partition deed bearing No.451/1971 as an item No.4 of the above said document. It is also admitted that the defendants are residing in the house in the plaint schedule property. The plaintiff claimed that the plaint schedule property is to be divided into 3 equal shares and allot one such share to the plaintiff. It is not in dispute with regard to the partibility of the property and shares to which the parties are entitled to. On the other hand, the case of the defendants is that they are residing in the house in the plaint schedule property and they have right of reservation over the house building in the property. Defendants took a contention that they are ready and willing to partition the suit property.

8. The plaintiff was examined as PW1. She has deposed in tune with the averments in the plaint. PW1 also deposed that the plaint schedule property is a co-ownership property and also deposed that the plaint schedule property is to be divided into 3 equal shares. The certified copy of document bearing No.451/1971 is produced by the plaintiff and marked as Ext.A1. On going through the Ext.A1, oral evidence of PW1 and admission of the defendants in the written statement, I have no hesitation to hold that the plaint schedule property was belonged to Gopalan Nambiar as per the 4th

item in Ext.A1 document. Therefore, I am of the view that the plaint schedule property is partible and same can be divided into 3 equal shares.

9. The next point to be decided is that whether the plaintiff is entitled to get a share of profit from the defendant No.1 and whether the defendant No.1 is entitled to get reservation over the house in the plaint schedule property. Admittedly, defendants are residing in the house in the plaint schedule property. The plaintiff claimed mesne profit from 11-12-2008. But it is pertinent to note that the plaintiff does not have a case that the defendants are in wrongful possession of the property. There is no dispute that the plaint schedule property is a co-ownership property. So what the plaintiff intended to claim is the share of profit and not the mesne profit. Anyhow, during cross examination PW1 deposed that "ഈ കേസിലെ സ്വത്തിൽ എന്തൊക്കെയാണ് അനുഭവങ്ങൾ, എത്രയാണ് അതിൽനിന്ന് വരുമാനം കിട്ടുന്നത് എന്ന് എനിക്ക് കൃത്യമായി പറയാൻ കഴിയില്ല. കാലാദായത്തിന്റെ ഓഹരി വിഹിതം എനിക്ക് എത്രയാണ് കിട്ടേണ്ടത് എന്ന് ഞാൻ അന്യായത്തിൽ പറയാതിരിക്കാൻ കാരണം എനിക്ക് അറിയാത്തത് കൊണ്ടാണ്".

10. During cross examination, learned counsel for the defendants put a suggestion to PW1 that the defendants did not receive any income from the plaint schedule property and therefore, the plaintiff is not entitled to get share of profit. The said suggestion was denied by PW1. Anyhow, what is the share of profit and whether the plaintiff is entitled to get a share of profit can only be decided at the time of final decree stage. The defendants claimed right of reservation over the house in the plaint schedule property.

11. A close scanning through the written statement filed by the defendants they have never stated that the house in the plaint schedule property constructed by defendants by using their own amount. The entitlement of reservation means that the allotment of house without assessing the value of the same. On going through the pleadings and evidence before this court I am of the view that the defendants are not entitled to get reservation over the house in the plaint schedule property. Now next point remains to be decided is that whether the defendants are entitled to get equity over the house in the plaint schedule property. During cross examination PW1 deposed that “ഈ അന്യായ പട്ടിക വസ്തു ഭാഗിച്ച് 3-ൽ ഒരു ഓഹരി ലഭിക്കണം എന്ന് മാത്രമാണ് ഞാൻ ഈ കേസിൽ ആവശ്യപ്പെടുന്ന നിവൃത്തി. അന്യായ പട്ടിക വസ്തുവിലുള്ള വീട് ഈ കേസിലെ പ്രതികൾക്ക് വെക്കുന്നതിൽ എനിക്ക് ആക്ഷേപം ഇല്ല. പ്രതികൾക്ക് താമസിക്കാൻ ആ വീട് മാത്രമേ ഉള്ളൂ”. During re-examination PW1 categorically deposed that she did not reside in the house in the plaint schedule property after the death of her father. From the evidence of PW1, it is clear that the plaintiff claimed 1/3 share over the plaint schedule property and she has no any objection in allotting the house to the defendants. Therefore, I am of the view that the house in the plaint schedule property is to be valued at the time of final decree stage and claim of equity can be relegated to the final decree stage. Hence issue No.1 is found in favour of the plaintiff, issue No.2 is answered accordingly and issue No.3 is found against the defendants. So the property is liable to be partitioned among the plaintiff and defendants. So the plaintiff is entitled to get 1/3 share and defendants are entitled to get 2/3 shares. The feasibility of physical

partition can be considered at the time of final decree stage. Being a suit for partition, all the parties are directed to bear their respective costs.

12. **Issue No.4**:- In view of my finding on issue Nos.1 to 3, the suit is decreed and preliminary decree is passed.

In the result, the suit is decreed and preliminary decree for partition is passed as follows:-

1. The plaint schedule property is directed to be partitioned into 3 equal shares by metes and bounds.
2. The plaintiff, defendant Nos.1 and 2 shall be allotted to 1/3 share each over the plaint schedule property.
3. The claim of share of profit and equity over the house are relegated to the final decree stage.
4. The allotment of share to the defendants shall be subject to payment of court fee.
5. All the parties to the suit are directed to bear their respective costs.
6. The case is listed for taking steps under Order XX, Rule 18 of CPC to 18.05.2026.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court, this the 31st day of March, 2026).

Sd/-
PRINCIPAL MUNSIFF

Plaintiff's Witnesses:-

PW1 : Sathi.P.K.

Plaintiff's Exhibits:-

- A1 : 28.03.2021 : Certified copy of partition deed No.451/1971 of
SRO, Valapattanam.
- A2 : 08.02.2024 : Copy of lawyer notice.
- A3 : 08.02.2024 : Postal receipt.
- A4 : : Unclaimed postal cover with acknowledgment card.

Defendant's Witnesses & Exhibits:-

Sd/-

PRINCIPAL MUNSIFF

// True Copy//

PRINCIPAL MUNSIFF

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***Fair/ Spare of Judgment
in OS.127/2024, dt: 31.03.2026.***