

IN THE COURT OF THE MUNSIFF OF KANNUR

Present: Sri.Manikandan.C.K, Principal Munsiff, Kannur,
Monday, the 30th day of March, 2026 (9th Chaithra, 1948)

ORIGINAL SUIT No.147/2024

1. E.P.Mariyumma, W/o.R.P.Abu, aged 64 years,]
Kunnumpurath House, Nirathupalam,]
Mayyil.P.O. Mayyil Amsom, Kannur Taluk,]
Kannur District, 670602.]
2. E.P.Kunhayissa, W/o.K.P.Ali, aged 51 years,]
Femina Manzil, Near L.P. School, Mayyil.P.O.]
Mayyil Amsom, Kannur Taluk, Kannur District-]
670602.]
3. E.P.Sahida, W/o.Late Muhammed Kutty, aged]
62 years, Elambilattu Puthiyapurayil,]
Kuttiattoor.P.O, Kuttiattoor Amsom, Kannur]
Taluk, Kannur District- 670602.] Plaintiffs
4. E.P.Sabira, D/o.Late Muhammed Kutty, aged]
42 years, Elambilattu Puthiyapurayil.]
Kuttiattoor.P.O, Kuttiattoor Amsom, Kannur]
Taluk, Kannur District- 670602.]
5. E.P.Ramseena, D/o.Late Muhammed Kutty,]
aged 35 years, Elambilattu Puthiyapurayil,]
Kuttiattoor.P.O, Kuttiattoor Amsom, Kannur]
Taluk, Kannur District- 670602.]
6. E.P.Thanseer, S/o.Late Muhammed Kutty, aged]
30 years, Elambilattu Puthiyapurayil,]
Kuttiattoor.P.O, Kuttiattoor Amsom, Kannur]
Taluk, Kannur District- 670602.]

Vs.

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| 1. | E.P.Andu @ E.P.Abdulla, S/o.M.Moideen, aged 57 years, Darol Rahama, Padayangode, Irikkur.P.O, Irikkur Amsom, Kannur District, 670593. |] | |
| 2. | Kunhamina, W/o.Khader, aged 62 years, Kunnumpurath House, Nirathupalam, Mayyil.P.O, Mayyil Amsom, Kannur Taluk, Kannur District-670602. |] | |
| 3. | Siddique, S/o.Moideen, aged 55 years, Kunnumpurath House, Nirathupalam, Mayyil.P.O, Mayyil Amsom, Kannur Taluk, Kannur District-670602. |] | |
| 4. | E.P.Pathumma, W/o.Late Moideen, aged 85 years, Elambilattu Puthiyapurayil, Kuttiattoor.P.O, Kuttiattoor Amsom, Kannur Taluk, Kannur District, 670602. |] | |
| | <u>Supplemental Defendant:</u> |] | |
| 5. | Suhara, D/o.Moideen, aged 50 years, Suhara Manzil, Nirathupalam, Mayyil.P.O, Mayyil amsom, Kannur Taluk, Kannur District. Impleaded and amended as per order in IA.2/2025 and IA.3/2025 dated.12.03.2025. |] | |
| | |] | Defendants |

This Suit coming on the 25th day of March, 2026 for hearing before me in the presence of Sri.K.P.Muhammed Basheer, Advocates for the plaintiffs; Sri.K.O.Prathap, Advocate for defendants No.1 to 4; Sri.K.O.Prasoon, Advocate for defendant Nos.5 and having stood over for consideration till this day; the court delivered the following:

JUDGMENT

Suit for partition.

2. Gist of the plaint averments are as follows:- The plaintiff No. 1 and defendants are the children of Mavukkandy Moideen and Elambilattu Puthiyapurayil Pathumma (defendant No.4). The elder son of the above said Moideen and Pathumma namely Muhammed Kutty died. The plaintiffs 3 to 6 are the wife and children of the above said deceased Muhammed Kutty. Mavukkandy Moideen and plaintiff Nos.2 and 3, Muhammed Kutty and the defendants are in joint ownership and possession of 56 cents of property situated in R.S No.14/2 of Kuttiaattoor amsom Pazhassi desom as per partition deed No.1780/1991 of SRO, Irikkur executed between them. While so, the above said Moideen died. After the death of Moideen, his share over the property devolved upon the plaintiffs 2 and 3. Muhammed Kutty and defendants as their legal heirs. Thereafter Muhammed Kutty also died. His share over the property devolved upon his wife and children, the plaintiffs 3 to 6. Thereafter the plaintiffs and defendants are jointly owning and possessing the above said 56 cents of property. Now the plaintiffs do not want to jointly possess the plaint schedule property as there are differences of opinion between the plaintiffs and defendants. On many occasions the plaintiffs had demanded partition of the property to the defendants but they were evading the same. Finally the plaintiffs had caused to send a lawyer notice on 20-9-2023 to the defendants demanding partition of the plaint schedule property. The defendants received the notice, but they are not ready

to partition the plaint schedule property so far. The plaintiffs are not willing to continue joint possession of the plaint schedule property. The plaintiff Nos.1 and 2 are having $9/58$ shares each and the plaintiff Nos.3 to 6 are jointly having $10/58$ shares over the plaint schedule property. The defendant Nos.1 and 3 are having $10/58$ shares and defendant No.2 is having $9/58$ shares and defendant No. 4 is having $1/58$ share over the plaint schedule property. Hence this suit for partition of the plaint schedule property into 58 equal shares by metes and bounds and allot $9/58$ shares each to the plaintiff Nos.1 and 2 and $10/58$ shares jointly to the plaintiff Nos.3 to 6.

3. As per order in IA 3/2025 the plaint was amended. It is pleaded that original 1st plaintiff failed to proceed with the case. So the 1st defendant was transposed as plaintiff No.7 Suhara, the daughter of Moideen is impleaded as defendant No.5. The defendant No.5 is the sister of transposed plaintiff and defendant Nos.2 and 3.

4. The contention of the defendant Nos.1 to 4 in brief are as follows:-
The plaintiff No.3 is not the daughter of Mavukkandy Moideen and defendant No.4 and therefore the plaintiff No.3 is not entitled to get any share in the property after the death of Mavukkandy Moideen. The share shown in the plaint is not correct. There is no children to the defendant No.2. There is no house for the defendant No.2 and her husband and they have no capacity to construct a new house. The defendant Nos.2 and 4 have been residing in the house in the plaint schedule property and the defendant No. 4 is being taken care by the defendant No.2 and therefore the house in

the plaint schedule property is to be allotted to the share of defendant Nos.2 and 4. The defendant No.3 has house and property adjacent to the plaint schedule property and therefore the share of the defendant No.3 in the plaint schedule property is to be allotted adjacent to the said property of the defendant No.3. The share of the defendant Nos.2 and 4 are to be allotted together as a group and share of the defendant Nos.1 and 3 are to be allotted separately.

5. The contention of the defendant No.5 in brief are as follows:- The plaintiff No.3 is not the daughter of Mavukkandy Moideen and defendant No.4 and therefore the plaintiff No.3 is not entitled to get any share in the property after the death of Mavukkandy Moideen. The plaintiff Nos.4 to 6 are not the children of Mavukkandy Moideen . The share shown in the plaint is not correct. The defendant No.4 alienated the property except the house therein to the defendant No.5 as per document bearing No.2986/2011 and therefore the share of defendant No.4 is entitled by the defendant No.5. The defendant No.4 had alienated her right in the house in the plaint schedule property to the defendant No.3 as per document bearing No.2985/2011 and therefore the house and property are to be allotted to the defendant No.3. The defendant No.3 has property adjacent to the plaint schedule property. Therefore his share in the plaint schedule property is to be allotted adjacent to his property. The share of the defendant No.5 is to be allotted separately and court fee for the same is also paid.

6. The following issues were framed for trial:-

1. What are the shares to which parties are entitled to?
2. Equity and reliefs?

7. No oral evidence from the side of the plaintiffs. Ext.A1 was marked. The 2nd defendant was examined as DW1. Exts.B1 and B2 are marked from the side of the defendants.

8. Heard both sides.

9. **Issue No.1:-** Initially, the suit was filed by the plaintiff Nos.1 to 6 for partitioning the plaint schedule property into 58 equal shares. The contention of the plaintiffs is that plaintiff No.1 and defendants are the children of Mavukkandy Moideen and defendant No.4 . The plaintiff Nos.4 to 6 are the children of deceased Muhammed Kutty who was the elder son of Moideen and defendant No.4. Further contention of the plaintiffs is that Mavukkandy Moideen, plaintiff Nos.2 and 3, Muhammed Kutty and the defendants were in joint ownership and possession of the plaint schedule property as per the partition deed No.1780/1991 of SRO, Irikkur. Thereafter, Mavukkandy Moideen died, after his death, his share over the plaint schedule property devolved upon the plaintiff Nos.2 and 3, Muhammed Kutty and defendants as his legal heirs. Further contention of the plaintiffs is that thereafter Muhammed Kutty also died, after his death, his share over the property devolved upon his legal heirs who are plaintiff Nos.3 to 6. The plaint schedule property are in joint ownership and possession of the plaintiffs and defendants.

10. On the other hand, the contention of the defendant Nos.1 to 4 is that the plaintiff No.3 is not the daughter of Mavukkandy Moideen and defendant No.4 and therefore the plaintiff No.3 is not entitled to get any share in the property after the death of Mavukkandy Moideen. The share shown in the plaint is not correct. There is no children to the defendant No.2. There is no house for the defendant No.2 and her husband and they have no capacity to construct a new house. Further contention of the defendant Nos.1 to 4 is that the defendant Nos.2 and 4 have been residing in the house in the plaint schedule property and the defendant No.4 is being taken care by the defendant No.2 and therefore the house in the plaint schedule property is to be allotted to the share of defendant Nos.2 and 4. Further contention of the defendant Nos.1 to 4 is that the defendant No.3 has house and property adjacent to the plaint schedule property and therefore the share of the defendant No.3 in the plaint schedule property to be allotted adjacent to the said property of the defendant No.3. The share of the defendant Nos.2 and 4 are to be allotted together as a group and share of the defendant Nos.1 and 3 are to be allotted separately.

11. When the case was in the list on 04-01-2025, the plaintiffs were absent. Thereafter, defendant No.1 filed application to transpose him as plaintiff as IA 1/2025. Thereafter, matter was removed from the list. The counsel for the transposed plaintiff No.7 filed memo stating that the defendant No.4 died and her legal heirs are already on record. Thereafter, transposed plaintiff filed application to implead one Suhara, D/o.Moideen as

defendant No.5. The said application was allowed by this court as per order in IA 2/2025 and corresponding amendment was also made as per order in IA 3/2025. Thereafter defendant No.5 entered appearance through counsel and filed written statement.

12. The contention of the defendant No.5 is that plaintiff No.3 is not the daughter of Mavukkandy Moideen and defendant No.4 and therefore the plaintiff No.3 is not entitled to get any share in the property after the death of Mavukkandy Moideen. The plaintiff Nos.4 to 6 are not the children of Mavukkandy Moideen. Further contention of the defendant No.5 is that the share shown in the plaint is not correct. Further contention of the defendant No.5 is that the defendant No.4 alienated the property except the house therein to the defendant No.5 as per document bearing No.2986/2011 and therefore the share of defendant No.4 is entitled by the defendant No.5. Further contention of the defendant No.5 is that the defendant No.4 had alienated her right in the house in the plaint schedule property to the defendant No.3 as per document bearing No.2985/2011 and therefore the house and property are to be allotted to the defendant No.3. Further contention of the defendant No.5 is that the defendant No.3 has property adjacent to the plaint schedule property. Therefore, his share in the plaint schedule property is to be allotted adjacent to his property. The share of the defendant No.5 is to be allotted separately and court fee for the same is also paid.

13. On going through the rival contentions, there is no dispute with regard to the partibility of the property. But the dispute is only with regard to the shares to which the parties are entitled to. On going through the Ext.A1 document, it can be safely concluded that the plaint schedule property is partible. The main contention of defendant No.5 is that the defendant No.4 had alienated her share except the right in the house in the plaint schedule property to the defendant No.5 as per Ext.B2 document. Further contention of defendant No.5 is that the defendant No.4 gifted the right over the plaint schedule property to the defendant No.3 as per Ext.B1 document.

14. Counsel for the transposed plaintiff filed share list before this court . Since the defendant No.4 had executed Exts.B1 and B2 documents by giving her right in the property as well as the house to the defendant No.5 and defendant No.3 respectively, I am of the view that the defendant No.4 is not entitled to get any share in the plaint schedule property. The share calculation statement filed by the counsel for the transposed plaintiff is not disputed by the other parties. So the property is liable to be partitioned among the plaintiff Nos.1 to 6 and transposed plaintiff No.7, defendant Nos.1 to 3 and 5. Being a partition suit all the parties have been bear their respective costs.

15. **Issue No.2**:- The claim of equity is relegated to the final decree stage.

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

1. The plaint schedule property and house are directed to be partitioned into 448 shares by metes and bounds.

2. The plaintiff Nos.1 and 2 shall be allotted 57 shares each.

3. The plaintiff Nos.3 to 6 jointly entitled to get 50 shares.

4. Transposed plaintiff is entitled to get 57 shares.

5. The defendant No.2 is entitled to get 57 shares.

6. The defendant No.3 is entitled to get 57 shares over the property and 113 share in the house.

7. The defendant No.5 is entitled to get 113 shares over the property and 57 share in the house.

8. The allotment of share to the defendants shall be subject to payment of court fee.

9. The question of equity, if any is relegated to the stage of final decree.

9. Both parties are directed to bear their respective costs.

10. 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 30th day of March, 2026).

Sd/-
PRINCIPAL MUNSIFF

Plaintiff's Exhibits:-

A1 : 07.10.1991 : Certified copy of partition deed No.1780/1991 of SRO, Irikkur.

Plaintiff's Witnesses:- Nil.

Defendant's Witnesses:-

DW1 : Kunhamina.

Defendant's Exhibits:-

B1 : 24.11.2011 : Certified copy of Document No.2985/2011 of SRO, Irikkur.

B2 : 24.11.2011 : Certified copy of Document No.2986/2011 of SRO, Irikkur.

Sd/-

PRINCIPAL MUNSIF

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***Fair/ Spare of Judgment
in OS.147/2024, dt: 30.03.2026.***