

IN THE COURT OF THE MUNSIF OF KANNUR

Present: Smt. Sushama P., Principal Munsiff, Kannur
Wednesday, the 12th day of February, 2025 (23rd Magha, 1946)

ORIGINAL SUIT No.441/2022

- | | |
|--|---|
| 1. Sathish Babu, S/o. Bhaskaran, aged 62 years, Old No.6, New 11. Third Cross Street East, Shenoy Nagar, Chennai-600030, Through Power of attorney holder Anandakrishnan, S/o. Bhaskaran. aged 54 years, Old No.6, New 11. Third Cross Street East, Shenoy Nagar, Chennai -600030. |] |
| 2. Sheela Bhaskaran, D/o.Bhaskaran, aged 60 years, Old No.6, New 11. Third Cross Street east, Shenoy Nagar, Chennai-600030 Through Power of attorney holder Anandakrishnan, S/o.Bhaskaran. aged 54 years, Old No.6, New 11. Third Cross Street east, Shenoy Nagar, Chennai-600030. |] |
| 3. Sashikala, D/o.Bhaskaran, aged 56 years 44 Litch Field Road, Hounslow, United Kingdom Through Power of attorney holder Anandakrishnan, S/o. Bhaskaran, aged 54 years, Old No.6, New 11, Third Cross Street east, Shenoy Nagar, Chennai – 600030. |] |
| 4. Anandakrishnan, S/o. Bhaskaran, aged 54 years. Old No.6, New 11, Third Cross Street east, Shenoy Nagar, Chennai –600030. Ph.9840157536. |] |

Plaintiffs

Vs.

- | | |
|---|---|
| 1. Meera Balan, D/o. Dasan, Aged 70 years. Vijayashanti Apartment, Flat B Grand Floor, Eswaran Karil Street, West Mambalam, Chennai 600033. |] |
| 2. Usha Bharathan, D/o.Dasan, Aged 65 years, Usha Nivas, Tar Road, Mundayad.P.O, Kannur, 670594. |] |

Defendants

- | | | |
|---|---|------------|
| 3. Dhanalaksmi Vijayan, D/o.Dasan, Aged 64 years, |] | |
| Challiyil House, Manapadi, Near Mookuthala |] | |
| Melekavu Temple, Mookuthala Post, |] | |
| Malappuram District |] | |
| 4. Murukesh Babu, S/o.Dasan, Aged 50 years, |] | |
| Mandan House, (Temple View), Chalad, Kannur. |] | |
| 5. Santhosh, S/o.Dasan, aged 45 years, Mukundam |] | |
| House, Near ITC Parcel Office, Manal, Kannur. |] | Defendants |
| 6. Harish Madhavan, S/o.Late Geetha Dasan, Aged |] | |
| 35 years, A9, SSM Nagar, Alapakkam, New |] | |
| Perungalathur, Chennai-600063. |] | |
| 7. Sreedevi, D/o. Late Geetha Dasan, Aged 36 years, |] | |
| A9, SSM Nagar, Alapakkam, New Perungalathur, |] | |
| Chennai- 600063. |] | |

This Suit coming on this day for hearing before me in the presence of S/Sri.C.K.Rathnakran and P.T.Aswanth, Advocates for plaintiffs; Sri.P.K.Sajeevan, Advocate for D2 and D4; S/Sri.M.C.Remeshan and Jeena.T, Advocate for D5; D1, D3, D6 and D7 were called absent and set exparte and the court delivered the following:

J U D G M E N T

Suit for partition.

2. The plaint averments in brief are as follows:- The plant schedule property originally belonged to Cheeya and her children, Dasan and Bhaskaran. After the death of Cheeya, the property devolved on Bhaskaran and Dasan. Bhaskaran is no more and his undivided right over the property devolved upon the plaintiffs, who are his children. Dasan is no more and his right devolved upon his wife Mythili and his children who are the defendants 1 to 5, Geetha and Jayalakshmi. Jayalakshmi is no more and her right devolved on her mother

Mythili. Geetha is also no more and her right devolved upon defendants 6 and 7 and Mythili. Mythili is no more and her right devolved upon the defendants 1 to 7. As the plaintiffs are entitled to get half share in the property and the defendants together are entitled to get the remaining half share. Though the plaintiffs approached the defendants for partitioning the plaint schedule property. They are not co-operating with the plaintiffs. Hence the suit.

3. The defendant Nos.2 and 5 filed written statement contending as follows:- The plaint schedule property is not partible as per the recital between the predecessors of the plaintiffs and the defendants. The title of predecessor in interest is admitted by the defendants. The plaint schedule property consists of eight cents and an old house. A separate room for worship exists. This defendant is lighting lamp in every morning and evening, separate Pooja of Ganapathi Homam and Guligan Kalasam are being performed twice in every year. The family members and the neighbours participate in the above poojas. The family members of the tharwad conducted Thamboola Prashnam and it is advised that construction of a temple is required for the welfare of the family members who were suffering from several kinds of hardship, including unnatural death, disease, and breakdown of family relation. The Thamboola Prashnam conducted by the Thandri Vijayan. He advised that plaint schedule property is to be kept without partition and all the family member can worship their gods regularly. Hence these defendants have been residing in the plaint schedule property by making some kind of alteration in order to light the lamp in every day. If the plaintiffs and defendants are not interested in keeping the property jointly, these defendants are ready to give their respective shares without effecting the partition. These defendants as well as the local people is intending

to construct a separate room for worship as per their belief in order to satisfy the desire of the predecessors. The house as well as well situated has to be kept separately for the interest of the devotees. If the property is partitioned, it will cause severe hardship to the family members. Hence the suit is liable to be dismissed.

4. The defendant No.4 filed written statement contending as follows:- The plaint schedule property is not partible as per the recitals entered between the predecessors of the plaintiffs and defendants. The title of predecessor in interest is admitted by the defendant No.4. This defendant admits the receipt of notice demanding partition. On receipt of notice, this defendant has contacted all the plaintiffs and requested to keep the property jointly in order to perform their victual ceremony. He reiterated the contentions taken by defendants 2 and 5 regarding Thamboola Prashnam and requirement of constructing a temple for the welfare of family members. If the plaintiffs and the defendants are not interested in keeping the property jointly this defendant is also ready to give their respective share without effecting the partition.

5. The defendant Nos. 1, 3, 6 and 7 were set exparte.

6. The following issues were framed for trial:-

1. Is the plaint schedule property partible?
2. If so what are the shares to which parties are entitled to ?
3. Relief and costs?

7. On the side of the plaintiffs, Exts.A1 and A2 were marked. On the side of the defendants, 4th defendant was examined as DW1.

8. Heard both sides.

9. **Issue Nos.1 and 2:-** The defendant No.4 is examined as DW1. He has admitted the title of predecessor in interest. According to DW1, the plaintiffs and the defendants have equal right over the plaint schedule property. He is residing along with family in the house situated in the plaint schedule property. He has no job or income. The plaint schedule property was kept unpartitioned for the purpose of worship. Deva presnam was conducted and it is advised to renovate the temple and to conduct rituals in the temple, but the family members are not ready for that. Hence he is lighting lamp and conducting Pooja in the temple. In case of partition, this place of worship is to be demolished. Continuation of Pooja is highly essential otherwise, hardship will be caused to the family members. In case of partition the house is to be allotted to him. The plaint schedule property is only eight cents and tax is remitted only for eight cents. The defend No. 4 has no objection in partitioning the property, excluding the temple, without demolishing the temple.

10. No commission is taken out to prove that Devasthanam is present in the plaint schedule property. In order to substantiate the contention of Devasthanam no document is produced. During cross-examination DW1 stated that a chart is prepared by the Astrologer. Exhibit A1 is the title document of the plaintiffs and defendants. Ext.A2 is the extract of building tax assessment register. It is not in dispute that there is a house in the plaint schedule property, but no document is produced before the court to show that there is Devasthanam and temple situated in the plaint schedule property.

11. No dispute is raised by the plaintiffs with regard to the contention of the defendant No.4 that he along with his family is residing in the house situated in the plaint schedule property. No contra evidence is adduced to resist the case

of defendant No.4 that in case of allotment house is to be allotted in his share. Even though contention regarding partiability is raised no material is placed on record to prove that the plaint schedule property is not patiable. On evaluation of the evidence on record it can only be held that the plaint schedule property is partiable.

12. **Issue No.3:-** In view of my finding on issue Nos.1 and 2, the plaintiffs are entitled to get a decree as prayed for. Hence this issue is answered in favour of the plaintiffs.

In the result, a preliminary decree is passed as follows:-

1. The plaint schedule property shall be divided into 2 equal shares.
2. The plaintiffs are jointly entitled to get one share over the plaint schedule property.
3. The defendant Nos.1 to 5 and the defendant Nos.6 and 7 jointly entitled to get one such share over the plaint schedule property.
4. The question of allotment of the house is relegated to the final decree proceedings.
5. The costs of the suit shall come out of the estate.
6. The case is listed for steps under Order XX Rule 18 of the Code of Civil Procedure to 11-03-2025.

(Dictated to the Confidential Asst., transcribed and typed by her, corrected and pronounced by me in open court, this the 12th day of February , 2025).

Sd/-
PRINCIPAL MUNSIFF

Plaintiff's Witnesses:- Nil.

Plaintiff's Exhibits:-

A1 : 09.11.1932 : Certified copy of Assignment deed No.2234/1932 of SRO, Kannur.

A2 : : Extract of Building Tax Assessment Register issued from Kannur Municipal Corporation.

Defendant's Witnesses:-

DW1 : Murukesh Babu.M.

Defendant's Exhibits:- Nil.

Sd/-

PRINCIPAL MUNSIFF

//True Copy//

PRINCIPAL MUNSIFF

ae/

Fair/ Spare Judgment in
OS. No.441/2022 dt: 12.02.2025.