

IN THE COURT OF THE MUNSIFF OF KANNUR  
Present: Sri. Manikandan C.K, Additional Munsiff, Kannur  
Monday, the 19<sup>th</sup> day of January, 2026 (29<sup>th</sup> Pausha,1947)

**ORIGINAL SUIT No. 350/2024**

Sajani. P. P.,D/o. Dineshan, aged 39 years, Puthiyapurayil ]  
House, Near English Church, Thavakkara, Kannur, ]  
Kannur District Hospital.P.O., Kannur.I amsom, Kannur ]  
Karar desom, Kannur-670017. (Phone No. 8281432702)

Plaintiff

Vs.

1 P. Geetha, D/o. Revathi, aged 60 years, residing at ]  
'Aswathi', Meenchanda, P.O. Govt. Arts College, ]  
Calicut-18, Kerala. ]

Defendants

2 P. Anitha, D/o. Revathi, aged 53 years, ]  
Residing at 'Aswathi', Meenchanda, ]  
P.O. Govt. Arts College, Calicut-18, ]

3 P. Vinod, S/o. Revathi, aged 58 years, Business, ]  
Residing at 'Aswathi', Meenchanda, ]  
P.O. Govt. Arts College, Calicut-18. ]

This suit coming on the 18<sup>th</sup> day of December, 2025 for final hearing before me in the presence of S/Sri. K K Balaram, K Babu, M R Hareesh, Abhijai E M, and Manoj P, Advocates for the plaintiff; and of S/Sri. Sajith Kumar Chalil, Renya K V and Smera T K Advocates for the the defendants; and having stood over for consideration to this day; the court delivered the following:-

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

Suit for partition.

2. Gist of the averments in the plaint is as follows:- Plaint schedule property along with the larger extent was purchased by Smt. P.P. Madhavi as per document No. 259/1950 of SRO, Kannur. Thereafter, the above said property was in the exclusive possession of the above said Madhavi. Madhavi

executed a Will bequeathing 4 cents of property with the house in it from the above said property to her son P.P. Dineshan and remaining 4 cents of property to her daughter Revathi as per Will No. 109/1996 of SRO, Kannur. Madhavi died on 03.12.2002. On the death of Madhavi, her right over the above said property devolved upon the above said Dineshan and Revathi as per the Will. Madhavi executed the above said will for the reason that her son Dineshan constructed the house in it utilizing his own funds. So, Madhavi bequeathed 4 cents of property along with the house to Dineshan. The above said Dineshan. P.P. died on 18.07.2022. During the life time of Dineshan he divorced his wife through the process of Court. On the death of Dineshan his right over the plaint A schedule property devolved upon his children Sonali and the plaintiff herein. Sonali executed a release deed in favour of plaintiff herein releasing her undivided right over the plaint A schedule property as per the Release Deed No. 2199/2023 of SRO, Kannur. Revathi also died and her right over the property devolved on her children who are the defendants herein. Even though a Will is executed by Madhavi with respect to the plaint schedule property, property was not physically partitioned as per the above said Will. Plaintiff several times requested the defendant to partition the property by metes and bounds but the defendants are delaying the same. So, on 12.04.2023 plaintiff issued a lawyer notice to the defendants to partition the plaint schedule property by metes and bounds and to her share separately. Defendants accepted the notice and issued a reply raising false contentions. All the allegations in the reply notice are false. Hence, this suit.

3. The averments in the written statement filed by defendants is as follows:- These defendants denied entire allegations and averments in the plaint except those that are specifically admitted. The contention of these

defendants is that the plaint schedule property is originally belongs to Smt. Puthiya purayil Madhavi, the grandmother of these defendants and she died on 03.12.2002. There is a house in the said property and the same was constructed during the life time of the above said Puthiya Purayil Madhavi. It is the fact that the two children of the above said Puthiya purayil Madhavi, who are Kamalam @ Revathi, the mother of the defendants and Dineshan, the father of the Plaintiff also died. Further contention of the defendants is that their grandmother Puthiya purayil Madhavi had not executed the Will No. 109/1996 of SRO, Kannur stated in the plaint. She was not mentally and physically fit to execute a document like a Will and other documents during the period from 1990's upto her death. She was under treatment for old age ailments and dementia (memory loss) during those period upto her death and if at all any such document as stated above is with the plaintiff, that document was forged document and the same was created under the cloud of vitiating elements. Further contention of these defendants is that the house in the said property was an old one and the same was constructed by the above said Puthiya Purayil Madhavi during her life time with her own fund. Further contention of these defendants is that the above said Puthiya purayil Madhavi, the grandmother of these defendants had executed a Registered Will bearing No.102/1983 of S.R.O. Kannur, while she was mentally and physically well and fit, by bequeathing the Plaint Schedule Property to the mother of these Defendants, i.e., Kamalam@ Revathi, and 1st and 2nd defendants in the above suit. The said Will was the last and legally valid Will of deceased Puthiya Purayil Madhavi. So, after the death of the above said Puthiya purayil Madhavi, the right over the said property devolved up on these defendants. Now these Defendants are co-owners in possession of the Plaint Schedule

Property and the house in it. So, the above plaintiff has no right, title or possession over the Plaintiff schedule property as co-owner or otherwise no right to claim partition of the Plaintiff Schedule property and reservation over the house in it. Further contention of these defendants is that they have sentimental attachment over the house in the Plaintiff schedule property. They were born in the said house and spent their childhood period there. Because of those deep emotional bond attached with the plaintiff schedule property and house in it, the defendants are unable to think about the allotment of a share of property to them without the house in it. So, these defendants are claiming reservation over the house and appurtenant land in the event of partition of the Plaintiff schedule property. Hence, the suit is to be dismissed with costs.

4. The averments in the additional written statement filed by defendants is as follows:- These defendants denied the entire averments and allegations in the amended portion of the plaint except those which are expressly admitted. The contention of these defendants is that their grandmother Puthiya purayil Madhavi had not executed the Will No.109/1996 of SRO, Kannur as stated in the amended portion of the Plaintiff. She was not mentally and physically fit to execute a document like a Will and other documents during the period from 1990's up to her death. She was under treatment for old age ailments and dementia (memory loss) during those period upto her death and if at all any such document as stated above is with the plaintiff that document was forged document and the same was created under the cloud of vitiating elements. Further contention of these defendants is that the above said Puthiya purayil Madhavi, the grandmother of these defendants had executed a Registered Will bearing No.102/1983 S.R.O. Kannur, while she was mentally and physically well and fit, by bequeathing the Plaintiff Schedule

Property to the mother of the Defendants, in Kamalam@ Revathi, and defendants 1 and 2 in the above suit. The said Will was the last and legally valid Will of deceased Puthiya Purayil Madhavi. So after the death of the above said Puthiya Purayil Madhavi, the right over the said property devolved up on the defendants. Now these Defendants are co-owners in possession of the Plaint Schedule Property and the house in it. So the above Plaintiff has no right, title or possession over the Plaint schedule property as co-owner or otherwise and no right to claim partition of the Plaint Schedule property and reservation over the house in it. Hence, above suit is liable to be dismissed with the costs.

5. From the rival pleadings the following issues were settled for trial:-

1. Whether Puthiyapurayil Madhavi had executed a Will No.109/1996 of SRO, Kannur and whether Puthitya Purayil Madhavi, who was mentally and physically fit to execute the above said Will?

2. Whether Puthiya Purayil Madhavi had executed as registered will bearing No.102/1983 of SRO, Kannur in favour of mother of defendants ie, Kamalam @ Revathi, defendants 1 and 2, while she was mentally and physically fit?

3. Whether the plaintiffs are the co-owners in respect of the plaint schedule property?

4. Whether the defendants are entitled to get reservation over the house and appurtenant land in the event of partition of the plaint schedule property?

5. Whether the plaint schedule property is partible or not?

6. Reliefs and costs?

6. Plaintiff was examined as PW1. Exts.A1 to A7 documents were marked. Witness from the side of plaintiff was examined as PW2. Defendant No.1 was examined as DW1. Ext.B1 document marked subject to proof.

7. Heard both sides.

8. **Issue Nos.1 to 5:-** These issues are considered together for the sake of convenience and also to avoid repetition of discussion of evidence. Case of the plaintiff is that the plaint schedule property along with larger extent was purchased by Puthiya Purayil Madhavi as per Ext.A1 document. While so in possession, Madhavi executed Ext.A2 will bearing No.109/1996 of SRO, Kannur by bequeathing 4 cents of property with house in it to her son P.P.Dinesh and remaining 4 cents of property to her daughter Revathi as per Will No.109/1996 of SRO, Kannur. The above said Madhavi died on 03.12.2002. In order to prove the death of said Madhavi, Ext.A3 death certificate was produced. On the death of above said Madhavi, her right over the property devolved upon Dineshan and Revathi as per Ext.A2 will. Further case of the plaintiff is that Madhavi executed Ext.A2 will for the reason that her son Dineshan constructed the house in it by utilizing his own funds and therefore, Madhavi bequeathed 4 cents of property along with house to Dineshan. Dineshan was died on 18.07.2022. During the life time of Dineshan, he divorced his wife through process of court. Ext.A4 certified copy of the order in OP No.119/1995 of Hon'ble Subordinate Judge of Thalassery dated 23.10.1996 produced would go to show that the marriage between P.P.Dinesh and B.L.Vanaja dissolved. On the death of P.P.Dinesh, his right over the plaint schedule property devolved upon his children Sonali and plaintiff. Further case of the plaintiff is that Sonali executed Ext.A5 Gift deed bearing No.2199/2023 of SRO, Kannur in favour of the plaintiff by

releasing her undivided right over the plaint schedule property. Further case of the plaintiff is that after the death of Revathi, her right over the property devolved upon her children, who are the defendants herein. Further case of the plaintiff is that even though Ext.A2 will was executed by Madhavi with respect to the plaint-schedule property, the property was not physically partitioned as per said will despite of the several requests. Finally, plaintiff had issued Ext.A6 lawyer notice to the defendants by requesting to partitioned the property by metes and bounds and allot her share separately. But the defendant send Ext.A7 reply notice by raising false allegations.

9. On the other hand, the contention of the defendants is that Puthiya Purayil Madhavi had not executed Ext.A2 Will and Madhavi was not mentally and physically fit to execute document during the period from 1990 till her death. Further contention of the defendants is that Madhavi was under treatment for old age ailments and dementia (memory loss) during those periods till her death and if at all any such document as stated above is with the plaintiff, that document was forged document and same was created under cloud of vitiating elements. Further contention of the defendants is that Puthiya Purayil Madhavi had executed Ext.B1 Will bearing No.102/1983 of SRO, Kannur while she was mentally and physically fit by bequeathing plaint schedule property to the mother of defendants Kamalam @ Revathi and 1st and 2nd defendants. Ext.B1 Will was the last Will and valid Will of deceased Puthiya Purayil Madhavi. On the death of Puthiya Purayil Madhavi, the right over the said property devolved upon the defendants and they are the co-owners of the plaint schedule property and house in it. The definite contention of the defendants is that plaintiff has no right, title or possession over the plaint schedule proper as a co-owners and has no right to claim

reservation over the house in it. Further contention of the defendants is that they have sentimental attachment in the plaint schedule property, they were born in the said house and spend their childhood period therein. So, the defendants are claiming reservation over the house and appurtenant land in the event of partition of the plaint schedule property, if this court found the plaint schedule property is partible.

10. On going through the rival contentions, it is not in dispute that the plaint schedule property was originally belongs to Puthiya Purayil Madhavi and she died on 03.12.2002. There is no dispute that there is a house in the plaint schedule property. There is no dispute that Dineshan and Kamalam @ Revathi are died. So, the Ext.A3 and the admission of the defendants that Puthiya Purayil Madhavi died on 03.12.2002 are sufficient to hold that Puthiya Purayil Madhavi was died on 03.12.2002. When the plaintiff contended that Ext.A2 Will executed by Puthiya Purayil Madhavi in favour of Dineshan, who is her father by bequeathing 4 cents of plaint schedule property and house in it and remaining 4 cents of property to Revathi, the defendants had taken a contention that Puthiya Purayil Madhavi had not executed Ext.A2 will and Puthiya Purayil Madhavi was not mentally and physically fit to execute the said document, since she was under treatment for old age ailments and dementia during those periods upto her death, Ext.A2 is forged document and defendants further taken a contention that Puthiya Purayil Madhavi had executed Ext.B1 Will by bequeathing plaint schedule property to Kamalam @ Revathi and defendants 1 and 2 by bequeathing the plaint schedule property, Puthiya Purayil Madhavi was mentally and physically fit and Ext.B1 Will was the last and legally valid Will.

11. From the rival contentions, it can be seen that if Ext.B1 will as claimed by the defendants is executed by Puthiya Purayil Madhavi in a sound disposing state of mind, then the plaintiff will not have any right or interest in the plaint schedule property. But, if the defendants failed to prove the execution of Ext.B1 document as contemplated under section 67 of BSA 2023 and plaintiff succeeded to prove the execution of Ext.A2 Will as per section 67 of BSA 2023, the plaint schedule property is partible and the plaintiff will get 4 cents of property and house situated therein. The burden to establish that Ext.A2 is a genuine will is on the plaintiff. The burden to establish that Ext.B1 will is a genuine will is on the defendants. In order to discharge such burden and to prove the execution of Ext.A2 document, the plaintiff and first attesting witness were examined as PW1 and PW2 respectively. As per the report of the Process Server, second attesting witness in Ext.A2 Will died.

12. PW1 deposed in tune with the averments in the plaint. She deposed that the document bearing NO.109/1996 is the last will of Madhavi, who had voluntarily executed, same is a registered document and also deposed that the circumstances in which Madhavi executed the said Will is clearly stated in the said Will itself. During cross examination, PW1 deposed that she has been paying basic tax for 4 cents of property and house out of the 8 cents of property and she started to pay the tax in respect of the property as per Ext.A5 document. She further deposed that she had paid the basic tax in respect of the property under the belief that Ext.A2 document came into existence and also deposed that Ext.A2 Will received by her after the death of her father. She further deposed that there is a recital in Ext.A2 that house therein was constructed by her father Dineshan and also deposed that the said house was in existence even prior to her death. During cross

examination, learned counsel for the defendant put a question to PW1 “അന്യായ പട്ടിക വസ്തുവിലുള്ള ഭവനം നിർമ്മിച്ചത് എപ്പോഴാണ്? 1980’s ൽ ആണ് (A). Even according to the evidence of PW1, she has no direct knowledge regarding who had constructed the house in the plaint schedule property and also deposed that she had hearsay knowledge that the house was constructed by her father. Learned counsel for defendant put a suggestion to PW1 that the house was constructed by Puthiya Purayil Madhavi and said suggestion was denied by PW1. She further deposed that she heard that her father had another job prior to 1975.

13. A close scanning through plaint description, the house number mentioned is 50/1653. As per Ext.A5 document, the year of construction of the house bearing No.50/1653 is shown as 1973 and same was RCC one. She also deposed that there is a recital in Ext.A2 that Puthiya Purayil Madhavi had executed another Will, the same was cancelled and executed Ext.A2 Will is her argument. She further deposed that her father was died after 20 years of the death of Puthiya Purayil Madhavi. She further deposed the there is a difference in signature in Ext.A2 will and document bearing No.102/1983 and also deposed that the signature in the 2nd and 3rd page of document bearing No.102/1983 are having difference. Learned counsel for the defendant put a suggestion of PW1 that the witnesses in Ext.A2 are the close friends of her father. PW1 replied the said question that the first witnesses in Ext.A2 is the friend of deceased brother of her father. During cross examination, learned counsel for the defendant put a question to PW1 that “Ext.A2 രേഖയുടെ അടിസ്ഥാനത്തിൽ എനിക്കോ, എന്റെ സഹോദരി സോനാലിക്കോ അവകാശം സിദ്ദിച്ചിട്ടില്ല എന്നു പറഞ്ഞാൽ? Second will പ്രകാരം അവകാശമുണ്ട്“. PW1 also deposed that it is not correct to say that Ext.A5 document is a sham document and also

deposed that it is not correct to say that the land tax paid on the basis of Exts.A2, A5 forged documents.

14. PW2 claimed that he is the attesting witness in Ext.A2 Will. PW2 deposed that he resided in a house adjacent to the house in which Puthiya Purayil Madhavi resided. He further deposed that he put his signature as a witness in the Will prepared and signed by Madhavi and also deposed that at the time of registration of the said will, Madhavi was mentally and physically healthy. He further deposed that he and other witness namely Abdul Rahman saw Madhavi signing. He further deposed that Madhavi and Abdul Rahman saw he is signing in the will and also deposed that he and Madhavi saw Abdul Rahman signing. He further deposed that “ഞങ്ങൾ മൂന്ന് പേരും അന്യോന്യം കാണുകയാണ് ഒന്നിച്ച് ആധാരത്തിൽ ഒപ്പ് വെച്ചിട്ടുള്ളത്”. During further chief examination, learned counsel for the plaintiff had shown Ext.A2 Will to PW2 and he deposed that he put his signature in Ext.A2 document. He identified his signature in Ext.A2 Will and marked. During cross examination, PW2 deposed that he was acquaintance with Madhavi from 1955 onwards and also deposed that the elder son of Madhavi studied along with him. He further deposed that he had connection with Dineshan as a neighbour. He further deposed that Madhavi talked with him regarding the writing of Ext.A2 Will and also deposed that Ext.A2 was written from the office of document writer namely Khalid near to the Registrar office.

15. He further deposed that Madhavi put her signature in Ext.A2 Will from the Registrar office as she understood that what is Ext.A2 document. He further deposed that he read Ext.A2 document. Learned counsel for the defendants put a suggestion to PW2 that signed in the Ext.A2 will forgedly prepared by Dineshan and also put a suggestion to PW2 that Ext.A2 was

prepared as impersonation. The said suggestion was denied by PW2. Learned counsel for the defendants also put a suggestion to PW2 that the signatures in Ext.A2 are forged one. Said suggestion was denied by PW2. During re-examination, PW2 categorically deposed that “രണ്ടാം സാക്ഷി അബ്ദുൾ റഹ്മാൻ Ext.A2 ൽ ഒപ്പ് വെക്കുന്നത് ഞാൻ കണ്ടിരുന്നു. ഞാൻ Ext.A2 ൽ ഒപ്പ് വെക്കുന്നത് അബ്ദുൾ റഹ്മാനും കണ്ടിരുന്നു”. There was no further cross examination on this point on the part of the counsel appearing for defendants. Even though PW1 and PW2 thoroughly cross examined by counsel for defendant No.1, nothing could be brought out to discredit the evidence of PW1 and PW2. Learned counsel for defendants 1 and 2 argued that Ext.A2 allegedly seen to have signed from a place called Kannothumbal ward and also argued that but the witness deposed otherwise. It is true that there is a recital in Ext.A2 that Ext.A2 was prepared and signed in Kannothumbal Ward. PW2 categorically deposed before this court that Ext.A2 was written from the office of a document writer namely Khalid near to the Registrar Office. It is pertinent to note that Ext.A2 Will was registered from SRO, Kannur. It is pertinent to note that Kannothumbal Ward is coming under the limit of SRO, Kannur. So, there is no discrepancy in the evidence of PW2 regarding the place from which Ext.A2 was prepared. It is pertinent to note that Ext.A2 will is a registered one.

16. DW1 (defendant No.1) deposed before this court that Chandrasekharan, who is the brother of Dineshan died in the year 1997 and thereafter, Dineshan and his mother resided together and the house in the plaint schedule property was old thatched house. DW1 further deposed that Dineshan got job as clerk in Canara Bank in the year 1973-1974. DW1 further deposed that said house was renovated by using fund of her grandmother and her mother also helped for the same. It is pertinent to note

that there is no any documents or any other oral evidence to show that the house was renovated by using the fund of grandmother of DW1 and her mother helped to renew the house. PW1 deposed during cross examination that she heard that her father got other job prior to getting job in Canara Bank. In Ext.A2 document, there is a clear recital to the effect that the house in the property was made by using the own fund of Dineshan. From the evidence of DW1 itself, it is clear that Dineshan had financial capacity to renovate the house in the year 1973. So, the circumstances and reasons by which the 4 cents of property and house therein allotted to Dineshan, who is the father of plaintiff is clearly described in Ext.A2 document. In short, the evidence of PW1 and PW2 coupled with Ext.A2 are sufficient to hold that plaintiff is succeeded to prove the execution of Ext.A2 document.

17. Next point to be decided is that whether the defendants are succeeded to prove the execution of Ext.B1 will. In order to prove the execution of Ext.B1 will, defendants filed application by citing two attesting witnesses and document writer as IA 2/2025. Said application was allowed by this court as per order dated 06.11.2025. But the summons of witness Nos.1 and 2 were returned by stating that address of the witnesses not correct and not found. The summons of witness NO.3 was also returned by stating that witness No.3 document writer died. Though, this court was pleased to issue summons to witness Nos.1 and 2 in correct address and produce the present address of witness Nos.1 and 2, counsel for the defendants submitted before this court that not aware about the address of the witnesses and not taken any steps. In short, the defendants 1 and 2 neither produced the attesting witnesses nor adduced any other evidence to prove the handwriting and signature of person who allegedly attested Ext.B1 document. Ext.B1

document was marked subject to proof through DW1, who is the defendant No.1 herein. She further deposed during cross examination that Ext.B1 document shown by her mother and also deposed that Ext.B1 document came into her custody in the month of January 2018 after the death of her mother. She further deposed that she did not take any steps to manage the property after getting Ext.B1. DW1 categorically deposed during cross examination that “അമ്മ ദിനേശനോട് ആ വീട്ടിൽ താമസിക്കാൻ പറഞ്ഞിരുന്നു’.

18. It is pertinent to note that the reason why Dineshan was excluded from Ext.B1 document not at all described in Ext.B1 document. DW1 also deposed during cross examination that she has no document to show that her mother was having ailments and dementia during 1990's. As per section 67 of the BSA 2023, one attesting witness, atleast has to be call for the purpose of proving the execution. But in section 68 of BSA 2023 says that it must be proved that attestation of one attesting witnesses, atleast is in his handwriting and signature of the person executing the document of that person. That means the handwriting can be spoken by a person who has acquaintance with the handwriting or the signature can be proved by comparison with the admitted handwriting or signature of the person executing the document. For the purpose of section 68 of BSA 2023, it is not enough to merely a random witness who assert that he saw attesting witness to affix her signature in the Will. It is true that Ext.B1 is a registered document, but that will not dispense the execution of will under section 67 of BSA 2023.

19. Learned counsel for the plaint-schedule had relied upon a judgment of the Hon'ble High Court of Kerala in ***R.Saraswathi Vs. Bavathi Ammal and others reported in 1988 KHC 552***. Hon'ble High Court observed that so far as will in concerned, the same, unlike other documents which require by law

to be attested, cannot be used as evidence unless atleast one attesting witnesses is called for the purpose of proving its execution, if there by an attesting witness alive and capable of giving evidence. It was further held that in case of a will, if the attesting witnesses cannot be found the execution can be proved by examining witness who can identified the signature of attestors". In the present case on hand, though the process server reported that the attesting witnesses Nos.1 and 2 not found and their address was not correct, the defendants did not take any further steps to produce correct address of attesting witnesses or to prove the signature of the attestors by examining the witnesses who can identify the signature of the attestors. In this case defendants miserably failed to prove the execution of Ext.B1 Will as per section 67 and 68 of BSA, 2023.

20. Section 70 of Indian Succession Act says that revocation of unprivileged will or volition. The unprivileged Will will be revoked by executing another will or some writing, declaring an intention to revoke the same. It is settled law that even if it is not stated that the earlier will was cancelled, only the last Will will prevail. In ***Mahesh Kumar and others vs. Vinod Kumar and others reported in 2012 KHC 4170***, it was held by Hon'ble Supreme Court that "once execution of subsequent will is proved, former will is automatically rendered redundant". It was further held that "no categorical recital regarding the cancellation of former will is needed in the subsequent will". But in Ext.A2, there is a clear recital to the effect that "102/1983 നമ്പരായി ഒസ്സ്യത് register ചെയ്തിരുന്നു എങ്കിലും പ്രസ്തുത ഒസ്സ്യത് പ്രകാരം കാര്യങ്ങൾ നടത്താൻ ഞാൻ ആഗ്രഹിക്കാത്തത് കൊണ്ടും എന്റെ പൂർണ്ണ ബോധത്തോടെ ഈ ഒസ്സ്യത് എഴുതി വെച്ചതാണ്". So, that itself shows that the testator intended to cancel the Ext.B1 will and thereafter executed Ext.A2 will in favour of the Dineshan and Revathi. In

***Meenakshi Amma and another v. Madhavi Amma reported in 2017 (2) KHC 116***, our Honble High Court has held that "...The law requires that atleast one attesting witness if alive should be examined to prove the execution of a Will, who has to satisfy not only the attestation of the Will by himself but also by other witness. The failure to satisfy the requirements of attestation of Will by the other witness also falls short of the due attestation of the Will by atleast two witnesses for the execution of a Will...".

21. In ***Ramachandra Rao v. Rajendra Rao reported in 1995 KHC 158***, our Hon'ble High Court has held that "... as the execution of will is disputed, the burden is squarely upon the propounder to establish the same. It is for them to dispel suspicious circumstance surrounding the execution of will. It is trite law that will is one of the solemn documents known to law as it would be humanly not possible to call the executant before the court to deny or affirm the execution of will it is highly essential that most trustworthy and unteachable evidence should be produced before the court to substantiate the authenticity and the truthfulness of the will. The factum of execution will has to be proved by propounder explaining every suspicious circumstance pointed out by the opposite party. The court has necessarily to consider all attendant circumstance and improbabilities if any, staring at the will...". A close scanning through Ext.A2 document, there is no an unfair dispossession of property or an unjust exclusion of legal heir. In the present case on hand, the entire 8 cents of property of Puthiya purayil Madhavi was divided equally as per Ext.A2 document. Further, why the house was allotted to Dineshan clearly described in Ext.A2 Will.

22. In ***Sasi Kumar Banarji and others vs. Suboth Kumar Banarji and other reported in AIR 1964 (SC) 529***, it was held that "in the absence of

suspicious circumstance surrounding the execution of will, proof of testamentary capacity and signature of the testator are required by law is sufficient to discharge onus". Defendants had not produced any documents to show that Puthiya Purayil Madhavi was suffering from dementia at the time of execution of Ext.A2 document. In short, defendants could not point out any cogent or single circumstances which creates a doubt in the mind of court with regard to the execution of Ext.A2 document. The Hon'ble Supreme Court in ***Venkitamuni Vs. Ayodhya Ram Singh and other reported in 2006 KHC 1547 (SC)***, it has been held that "a propounder has to show that will was signed by testator and testator was sound disposing state of mind and he understood the nature and effect of dispossession, that he put signature in the testament of his own and signed in the presence of two witnesses who attested in it in his presence and presence of each other and once these elements are establish, the onus which rest on the propounder is discharged". So, the net effect of evidence available on record that plaintiff could convincingly prove that testamentary capacity, signature of testator in Ext.A2 document and execution of Ext.A2. It has been held by three bench of the Hon'ble Supreme Court in ***Venkitachala Iyenkar Vs. B.N.Thimmajamma reported in 1959 KHC 498 (SC)***, it has been held that "ordinary when the evidence adduced in support of the will is disinterested, satisfactory and sufficient to prove the sound disposing state of mind of testator and his signature required by law, court would be justify in making findings in favour of the propounder". From considering the entire evidence on record, I am satisfied that plaintiff had succeeded to prove execution of Ext.A2 will by Puthiya Purayil Madhavi in favour of Dineshan and Revathi by bequeathing 4 cents of property and house to Dineshan and 4 cents of property to Revathi

and defendants failed to prove the execution of Ext.B1 Will. Further, plaintiff also succeeded to prove that she has right over plaint schedule property and plaint schedule property is partible. Since 4 cents of property and house allotted to Dineshan as per Ext.A2 Will and execution of Ext.A2 proved by the plaintiff, I am of the view that defendants are not entitled for reservation of house in the property. So, the plaintiff is entitled to get house in the plaint schedule property without valuation. Hence, these issues are found in favour of the plaintiff.

**23. Issue No.6:-** In view of finding on issue Nos.1 to 5, the suit is decreed and preliminary decree is passed. The costs of the suit shall come out of the estate.

In the result, suit is decreed by passing a preliminary decree upon the following terms:-

1. The plaint schedule property be divided into 2 equal shares.
2. Plaintiff is entitled to get one share and house situated therein.
3. The defendants are together entitled to get one share.
4. The allotment of share to the defendants shall be subject to payment of court fee.
5. The costs of the suit shall come out of the estate.
6. The case is listed for taking steps under Order XX, Rule 18 of CPC to 20.02.2026.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court, this the 19<sup>th</sup> day of January, 2026).

Sd/

ADDITIONAL MUNSIFF

**Plaintiff's Witness :-**

PW1- Smt. Sajani P P (With affidavit)

PW2: Sri. Musthafa V K (With Affidavit)

**Plaintiff's Exhibits:-**

- A1 10.02.1950 Jenm Deed No.259/1950 of SRO, Kannur.
- A2 31.08.1996 Will bearing No. 109/1996 of SRO, Kannur.
- A3 06.07.2023 Death Certificate of deceased P P Madhavi.
- A4 23.10.1996 Certified copy of Order in OP No. 119/1995 of Subordinate Judge, Thalassery.
- A5 26.07.2023 Original Gift Deed No. 2199/2023 of SRO, Kannur.
- A6 12.04.2024 Copy of Lawyer Notice sent to defendants by Advocate K K Balaram.
- A7 15.05.2024 Reply Notice issued by Advocate Sajith Kumar Chalil

**Defendant's Witnesses:-**

DW1: Smt. Geetha (With Affidavit)

**Defendant's Exhibits:-**

- B1 12.10.1983 Registered Will bearing No. 102/1983 of SRO, Kannur.(Subject to proof)

Sd/

ADDITIONAL MUNSIFF

vka/-

Fair/ Spare copy of Judgment in  
OS No.350/2024, Dated: 19.01-2026.

