

IN THE COURT OF THE MUNSIFF OF TALIPARAMBA

Present: Smt. Athulya A, Munsiff

Tuesday, the 31st day of March, 2026
(10th day of Chaithra, 1948)

ORIGINAL SUIT No. 218 OF 2017

1. Pandikasalayil Nabeesa, 65 years,)
W/o Late Kunhamad.)
2. Pandikasalayil Assankunhi, 52 years,)
S/o Pandikasalayil Nabeesa.)
3. Pandikasalayil Mammad Kunhi @)
Mammad Kutty (died))
(Amended as per order in I.A.6/25 dated)
26.08.2025.)

Supplemental defendants:

4. Bushra K.P., W/o Pandikasalayil Mammad)
Kutty, aged 45,)
5. Mujeeba Muhammad, D/o Pandikasalayil)
Mammad Kutty, aged 15 (Minor))
6. Masin Muhammad, S/o Pandikasalayil Mammad)
Kutty, 9 years (Minor))
7. Minha Muhammad, D/o Pandikasalayil)
Mammad Kutty, 7 years (Minor))
Minor Nos.5 to 7 are represented by mother &)
4th plaintiff Bushra K.P., all are residing at)
K.P.House, P.O.Kottila, Ezhome, Kannur)
District.)
[Supplemental plaintiff Nos.4 to 7 are the legal)
heirs of deceased plaintiff No.3. They are)
impleaded as per order in I.A.05/2025 dated)
26.08.2025 and amended as per order in)
I.A.06/2025 dated 26.08.2025.)

Plaintiffs

Vs.

1. Kandacheerakath Abdul Samad, 71 years,)
S/o Pandikasalayil Abdulla, Kuttayeri amsom,)
Panangattur desom, Taliparamba Taluk, Kannur)
District, Now residing at Anayidukk, Thana,)
Kannur.)
2. Pazhayapurayil Kokkadavath Jameela, 42 years,)
D/o Late Abdul Kareem.)
3. Pazhayapurayil Kokkadavathi Seenath Beevi,)
39 years, D/o Late Abdul Kareem.)
4. Pazhayapurayil Kokkadavath Abdul Rasheed,)
38 years, D/o Late Abdul Kareem.)
5. Pazhayapurayil Kokkadavath Soudabi,)
37 years, D/o Late Abdul Kareem.)
6. Pazhayapurayil Kokkadavath Muhammed Madani,)
36 years, D/o Late Abdul Kareem.)
7. Pazhayapurayil Kokkadavath Abdul Sathar,)
35 years, D/o Late Abdul Kareem, defendant Nos.)
2 to 7 are residing at Pariyaram amsom, Vayad)
desom, Taliparamba Taluk.)
8. Pandikasalayil Pathumma, 69 years,)
D/o Pandikasalayil Ayisumma, Pariyaram)
amsom, Vayad desom, Taliparamba Taluk.)
9. Pandikasalayil Kadeeja, 55 years,)
D/o Pandikasalayil Pathumma, Pariyaram)
amsom, Vayad desom, Taliparamba Taluk.)
10. Pandikasalayil Abdulla, 53 years,)
D/o Pandikasalayil Pathumma, Pariyaram)
amsom, Vayad desom, Taliparamba Taluk.)
11. Pandikasalayil Ayisa, 50 years,)
D/o Pandikasalayil Pathumma, Pariyaram)
amsom, Vayad desom, Taliparamba Taluk.)

Defendants

This suit coming on 13th day of March, 2026 for final hearing before me in the presence of S/Sri.P.P.Sandeepkumar and Surendran P., Advocates for the Plaintiffs, of Sri.V.A.Satheesh, Advocate for the defendant Nos 8, 9 and 11; defendant Nos.1, to 7 & 10 are called absent, set exparte; Plaintiff No.3 is no more; and having stood over to this day for consideration; the court delivered the following:

J U D G M E N T

Suit for partition.

2. The plaint averments briefly are as follows:- The plaint schedule properties originally belonged to the Pandu Kalasham tharavad, of which Amina of Pandikasalayil, the grandmother of the 1st plaintiff's mother, was a member. The tharavad properties were partitioned as per Partition Deed No.259/1929 dated 28.01.1929 of the Taliparamba Sub Registrar Office, among the members of the tharavad including Amina and her children Abdullah and others. Under the said partition deed, the properties described as Item Nos. 1 to 7 were set apart to the first thavazhi, consisting of Pandikasalayil Abdullah, his mother Amina, the children of Amina namely Aleema, Mammu and others including Moytheenkutty, Ibrahim, Hassan and Ayissa. The property described as Item No.1 in the said partition deed forms part of the present plaint schedule properties. The members of the said thavazhi tharavad, including the plaintiffs, are Muslims who follow the Marumakkathayam system prevailing among Muslims in Malabar, and they were living as a joint family. After the execution of the above partition deed, the members of the said tharavad under the leadership of Pandikasalayil Abdullah as the karanavar continued to possess and enjoy the plaint schedule properties. Later, Abdullah sought to terminate the

joint family system and demanded partition of the thavazhi properties by issuing a registered notice dated 15.02.1959 to the other co-owners. Subsequently, Abdullah executed a registered gift deed dated 27.11.1959, gifting his undivided share in the thavazhi properties to his wife Kande chirakath Mariyam and children Zainaba, Pathumma, Abdusamad, Khadeeja, Abdullah, Muhammad and Amina Mariyam. Thereafter, Mariyam and her children instituted O.S.No.4 of 1970 before the Munsiff's Court, Taliparamba, seeking partition and separate allotment of their share in the tharavad properties. In the said suit, the present plaintiffs were arrayed as defendants 12, 13 and 14. At the time, when the notice dated 15.02.1959 was issued demanding partition of the tharavad properties, the persons entitled to rights in the thavazhi tharavad were Pandikasalayil Abdullah, Umma Ali Umma, Ayissa (daughter of Ali Umma), Ayissa's children Abdullah, Kareem, Abdullah, Pathumma and Nabeesa; Pathumma's children Khadeeja, Abdullah and Ayissa; Nabeesa's children Assan Kunju and Muhammad Kunhi; and Mammu's children Moideenkutty, Ibrahim and Assan. Since the demand for partition was made on 15.02.1959, the rights in the thavazhi properties were determined with reference to the persons alive on that date. All such persons were therefore made parties in O.S. No.4/1970, and any descendants born after 15.02.1959 have no right in the said tharavad properties. In the said suit, Pandikasalayil Ayissumma, the mother of Abdullah, was the 1st defendant, and the persons from Moytheenkutty to Ayissumma were defendants 2 to 11, while the plaintiffs herein were defendants 12, 13 and 14. During the pendency of the suit, after the death of Ali Umma, her legal representative Pandikasalayil Abdullah was impleaded as supplemental 15th defendant. Ultimately, a preliminary decree dated 16.03.1974 was passed in O.S. No.4/1970, directing partition of the properties except the old tharavad house and the land on which it stood, which was excluded from partition. The

remaining properties were ordered to be divided into 140 shares, of which 14/140 shares were allotted to the plaintiffs in that suit, 10/140 shares to the 4th defendant Assan, and 5/140 shares to the 15th defendant Abdullah. Subsequently, in R.I.A.No.416/1974 in O.S.No.4/1970, a final decree was passed on 06.11.1974. In the Commissioner's plan C1, in the said suit, Plot A was allotted to the plaintiffs, Plot B to the 4th defendant Assan, and Plot C to the 15th defendant Abdullah. After allotting the said plots, the remaining portion of the property is the property now described as item No.1 of the plaint schedule. The old tharavad house and the land measuring 5¾ cents on which it stood, were excluded from partition in the final decree, are now described as item No.2 of the plaint schedule property. The said old tharavad house has now become dilapidated due to passage of time and no longer exists. The 2nd and 3rd plaintiffs are the children of the 1st plaintiff. The 1st plaintiff constructed a residential house in Item No.1 of the plaint schedule property with her own funds, and she and her children are residing therein. The defendants or other co-owners have no right or possession over the said house. After the final decree in O.S. No.4/1970, the rights in the plaint schedule properties devolved only upon certain defendants in the earlier suit and the present plaintiffs. The rights of some of the co-owners were subsequently transferred through various documents. Moytheenkutty and Ibrahim (Defendants 2 and 3 in O.S.4/1970) assigned their rights through Deed Nos.2537/1980 and 2538/1980 in favour of Ayissumma, the mother of the 1st plaintiff. The rights of Abdul Kareem devolved upon his legal heirs including his wives and children, and some of them later assigned their undivided rights to the 1st plaintiff through Sale Deed No.646/1994. Further, Ayissumma executed Document No.11/1993, assigning her entire rights in Item No.1 property in favour of the 1st plaintiff and her sister Pathumma. By Document No.649/1993, Ayissumma assigned her rights in Item

No.2 property to the 1st plaintiff. Similarly, Abdullah (7th defendant in O.S.4/1970) executed Document Nos.648/1993 and 647/1993 assigning his rights in both items to the 1st plaintiff and Pathumma. Later, Pathumma and her daughter Khadeeja assigned their rights in item No.2 property to the 1st plaintiff through Document No.645/1993. Accordingly, the 1st plaintiff is entitled to 36/120 share in Item No.1 property and 76/130 share in Item No.2 property. The 2nd and 3rd plaintiffs are each entitled to 10/120 share in Item No.1 and 10/130 share in Item No.2. Thus, the plaintiffs together are entitled to 56/120 share in Item No.1 property and 96/130 share in Item No.2 property. The 1st defendant has no right in Item No.1 property, but is entitled to 10/130 share in Item No.2 property. Defendants 2 to 7 together are entitled to 4/120 share in Item No.1 and 4/130 share in Item No.2. The 8th defendant has 30/120 share, the 9th defendant has 10/120 share, and Defendants 10 and 11 have 10/120 share each in Item No.1 and 10/130 share each in Item No.2. The plaintiff schedule Item No.1 property corresponds to the property shown in R.S.No.32/3 in the Commissioner's plan C1 in the final decree in RIA 416/74 in O.S.4/1970 (now Re-Survey No.34/5). The Item No.2 property consists of the site of the old tharavad house along with the well, which is separately marked in the said plan. The old tharavad house is no longer in existence. Since the plaintiff schedule properties have not been separately allotted to the respective sharers, the plaintiffs and defendants are facing considerable inconvenience. The house constructed by the 1st plaintiff in Item No.1 property was built using her own funds with the consent of the other co-owners, and the defendants have no right over that house. Despite repeated demands made by the plaintiffs to the defendants to effect partition and separate possession of their shares, including a direct request made on 28.04.2017, Defendants 2 to 7 refused to agree. Hence this suit has been filed seeking partition of the plaintiff schedule Item No.1

property into 120 shares according to value and convenience, and allot 56/120 share to the plaintiffs together, including the residential house bearing No. P.P.IV-496, and partition the plaint schedule Item No.2 property into 130 shares, and allot 96/130 share to the plaintiffs together.

3. Despite receipt of summons by the defendants 1 to 5, 7, they remained absent and the suit has proceeded *ex parte* against them.

4. The defendants 8, 9 and 11 entered appearance and filed written statement contending as follows: The averment in the plaint that the plaintiffs are entitled to 56/120 share in Item No.1 of the plaint schedule property and 96/130 share in Item No.2 property is not correct. The allegation in the plaint that the house bearing No. P.P.IV/496 situated in Item No.1 property was constructed exclusively by the 1st plaintiff is also incorrect. In fact, there already existed a joint family house in Item No.1 property, and the 1st plaintiff has only made certain additions and alterations to the said house and is residing there. The shares shown in the plaint in respect of the defendants in the plaint schedule properties are also incorrect. The 1st plaintiff has only an equal right in Item No.1 property along with the other sharers. Defendants 9, 10 and 11 each are entitled to 10/120 share in Item No.1 property. The 10th defendant is presently working in Saudi Arabia. Defendants 8 and 9 had earlier transferred their rights in the house situated in Item No.1 property. With respect to Item No.2 property, the 1st plaintiff and the 8th defendant have equal rights, and the statements made in the plaint regarding the said property are incorrect. Defendants 9, 10 and 11 each are entitled to 10/130 share in Item No.2 property. The defendants state that their respective shares in the plaint schedule properties should be separately allotted to them in accordance with their share rights. While effecting partition, the value of the house situated in Item No.1 property should be assessed and included in the allotment of shares. The defendants are prepared to deposit the

necessary court fee for their share (counter claim/partition share). The plaint schedule properties contain mature timber trees, and their value should also be assessed and included in the partition. Since the plaint schedule properties are not liable to be partitioned in the manner claimed in the plaint, the defendants pray that the suit may be dismissed with costs.

5. Since summons to the defendants 6 and 10 were not practicable in the ordinary process, substituted service was ordered and effected and the summons deemed served, called absent and the suit has proceeded ex parte against them.

6. During the pendency of the suit, the 3rd plaintiff died and supplemental plaintiffs 4 to 7 were impleaded as his legal heirs.

7. Then the following issues are raised for determination by my landed predecessor;

1. Are the plaint schedule properties partible?
2. If so, what are the shares of the respective parties?
3. What are the equities and reservation to which parties entitled?
4. Relief and costs.

8. The 1st plaintiff was examined as PW1 Exts. A1 to A10 were marked. The defendants have no evidence either oral or documentary.

9. Heard the learned counsel for both sides. The learned counsel for the plaintiffs filed detailed note of arguments.

10. **Issues No.1 to 3:-** For brevity and convenience, Issues No.1 to 3 are considered together. The suit is one for partition of the plaint schedule properties. The case of the plaintiffs, is that the plaint schedule properties originally formed part of the properties belonging to the thavazhi of the plaintiffs' grandmother. According to the plaintiffs, the said properties were the subject matter of an earlier partition suit, O.S. No.4/1970 on the file of the Munsiff Court, Taliparamba. In the said suit, a preliminary decree was passed

and thereafter a final decree was also passed in R.I.A. No.416/1974. It is the specific case of the plaintiffs that though several portions of the properties were divided and allotted in the said proceedings, certain portions including the plaint schedule properties remained unallotted and undivided, and therefore the parties to the present suit continue to hold the same jointly as members of the thavazhi. The plaintiffs therefore seek the relief of partition and separate possession of their respective shares in the said properties. The defendants have filed a written statement disputing the entitlement of the plaintiffs to claim partition. However, the defendants have not seriously disputed the existence of the earlier partition proceedings in O.S. No.4/1970 or the passing of the preliminary decree and final decree therein. The contention raised is mainly with respect to the shares claimed by the plaintiffs.

11. In order to establish the claim of the plaintiffs, the 1st plaintiff was examined as PW1 and produced Exts.A1 to A10 documents. PW1 reiterated the plaint averments. PW1 deposed that the plaint schedule properties originally belonged to the thavazhi of the plaintiffs' grandmother and that the same were the subject matter of partition in O.S. No.4/1970 on the file of the Munsiff Court, Taliparamba. PW1 further stated that in the said suit a preliminary decree and thereafter a final decree were passed, but certain portions of the property including the plaint schedule properties remained unallotted and therefore continued to be held jointly by the members of the thavazhi. PW1 produced Exts.A1 to A10 documents in support of the plaintiffs' case. During cross-examination, PW1 stated that the present suit was filed for obtaining the shares in the property and admitted that certain defendants including defendants 8, 9 and 11 are also entitled to share rights in the plaint schedule properties. PW1 further stated that the old tharavad house in the property had collapsed earlier and that a new structure was subsequently put up. However, nothing material was

put in cross-examination to discredit the testimony of PW1 regarding the joint nature of the plaint schedule properties or the fact that the said properties remained unallotted in the earlier partition proceedings.

12. The plaintiffs have relied upon Exts.A1 to A10 to substantiate their case. Ext.A8 is the judgment in O.S. No.4/1970 on the file of the Munsiff Court, Taliparamba and Ext.A9 is the preliminary decree passed therein. A perusal of these documents would show that the properties involved in the said suit were ordered to be partitioned into 140 equal shares, out of which 14 shares were allotted to the plaintiffs in that suit, 10 shares to the 4th defendant and 5 shares to the 15th defendant. Ext.A10 is the final decree passed in R.I.A. No.416/1974 along with the commissioner plan. The said document would show that certain portions of the properties were allotted to the respective parties as per the commissioner plan marked therein. At the same time, the records indicate that certain portions including the land of the old tharavad house, were not specifically allotted to any of the parties in the final decree proceedings. The plaint schedule properties are stated to represent those remaining portions which continued to be held jointly by the members of the thavazhi. The defendant Nos. 8, 9, 11 denied the share shown by the plaintiff and thus opposed the partition as claimed by the plaintiff. But there is no evidence on record to substantiate the contentions raised by these defendants. The documents produced by the plaintiffs and other materials on record therefore probalilise the case that the plaint schedule properties form part of the properties involved in the earlier proceedings and that they remained unallotted even after the final decree.

13. The plaint schedule description shows that Item No.1 consists of $67\frac{1}{4}$ cents of property with a residential house therein, and Item No.2 consists of $5\frac{3}{4}$ cents and the old tharavad house. The description of the properties and their

survey particulars corresponds with the properties referred to in the earlier proceedings. The materials on record therefore shows that the plaint schedule properties form part of the properties involved in the earlier suit and that they remained undivided after the final decree. It is also relevant to note that the parties to the suit belong to the Muslim (Mappila) community and the plaint specifically states that they are governed by Mappila Marumakkathayam law. Under the said system, properties belonging to the thavazhi are held jointly by the members of the thavazhi until a valid partition is effected. In the present case, though partition proceedings were conducted earlier, the materials on record shows that the plaint schedule properties were not specifically allotted to any party and therefore continue to be held jointly by the members of the thavazhi. The plaintiffs have also produced an argument note showing detailed calculations regarding the fractional shares of the respective parties in the plaint schedule properties. However, the calculation reflected in the said argument note requires more clarification and is not approximately tallying with the plaint. The rights of the parties are thus determined primarily on the basis of the pleadings, the oral evidence and the documentary evidence available on record. The materials available on record clearly establish that the parties are co-sharers in the plaint schedule properties and that the said properties are liable to be partitioned among them. The precise calculation of the shares and the allotment of specific portions can appropriately be done during the final decree proceedings with the assistance of a commissioner, after considering the equities, the existence of buildings in the property and other relevant circumstances. During the pendency of the proceedings, the 3rd plaintiff died and supplemental plaintiffs 4 to 7 were impleaded as his legal heirs. The share of the 3rd plaintiff over the plaint over the plaint schedule properties devolves upon the supplemental plaintiffs 4 to 7 as his legal heirs. Thus considering the

discussions made above, this court is of the view that the plaint schedule properties are joint properties and are partible, and that the parties are entitled to claim their respective shares as prayed. The question regarding the exact shares of the parties and the equities and reservations, if any, can be appropriately considered during the final decree proceedings. The 1st defendant has no right over item No.1 of the plaint schedule property and defendants 8 and 9 have no right over item No.2 of the plaint schedule property. Accordingly, Issue Nos.1 to 3 are answered in favour of the plaintiffs, finding that the plaint schedule properties are partible and that the parties are entitled to partition and separate possession of their respective shares therein.

14. **Issue No.4**:- In view of the finding in the above issues, the suit can very well be decreed and a preliminary decree can be passed.

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

1. Item No.1 of the plaint schedule property shall be divided by metes and bounds into 120 equal shares.
2. The plaintiffs and supplemental plaintiffs 4 to 7 together entitled to 56/120 shares over item No.1 of plaint schedule property.
3. The defendants 2 to 7 jointly are entitled to 4/120 such share over item No.1 of plaint schedule property.
4. The 8th defendant is entitled to 30/120 such share over item No.1 of plaint schedule property.
5. The 9th defendant is entitled to 10/120 such share over item No.1 of plaint schedule property.
6. The defendants 10 and 11 each are entitled to 10/120 such share over item No.1 of plaint schedule property.

II . Item No.2 of the plaint schedule property shall be divided by metes and bounds into 130 equal shares.

7. The plaintiffs and supplemental plaintiffs 4 to 7 together entitled to 96/130 shares over item No.2 of plaint schedule property.
8. The 1st defendant is entitled to 10/130 such share over item No.2 of plaint schedule property.
9. The defendants 2 to 7 jointly are entitled to 4/130 such share over item No.1 of plaint schedule property.
10. The defendants 10 and 11 each are entitled to 10/130 such share over item No.2 of plaint schedule property.
11. Any of the parties can apply for the passing of a final decree on payment of the requisite court fee.
12. Costs of the suit shall come out of the estate.
13. The suit is listed for taking steps under O. 20 R.18 of the Code of Civil Procedure, 1908 to 18.05.2026.

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

Sd/-
MUNSIFF

Plaintiff's Witness:-

PW1 : Nabeesa.

Plaintiffs Exhibits:-

- | | | |
|----|------------|---|
| A1 | 28.01.1929 | True copy of partition deed No.251/1929 of SRO. Taliparamba. |
| A2 | 04.03.1993 | Registered Osyath No.11/1993 of SRO, Taliparamba. |
| A3 | 03.03.1993 | Certified copy of settlement deed No.649/1993 of SRO Taliparamba. |

- A4 08.03.1993 Certified copy of Jenm deed No.646/1993 of SRO Taliparamba.
- A5 08.03.1993 Certified copy of settlement deed No.648/1993 of SRO Taliparamba.
- A6 08.03.1993 Certified copy of settlement deed No.647/1993 of SRO Taliparamba.
- A7 08.03.1993 Certified copy of gift deed No.645/1993 of SRO Taliparamba.
- A8 16.03.1974 Certified copy of decree in O.S.4/1970 of Munsiff Court, Taliparamba.
- A9 16.03.1974 Certified copy of revised Judgment in O.S.4/1970 of Munsiff Court, Taliparmba.
- A10 26.11.1974 Certified copy of RIA 416/74 in O.S.04/1970 with Plan (Munsiff Court, Taliparamba)

Defendant Witness & Exhibits : NIL.

Sd/-
MUNSIFF

