

IN THE COURT OF THE SUBORDINATE JUDGE OF PAYYANNUR

Present:- **Sri.Unnikrishnan.M.S.**, B.A, LL.B., Subordinate Judge

Monday, the 14th day of August, 2023

(23rd Sravana 1945)

ORIGINAL SUIT No.40 OF 2018

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|----|---|---|------------|
| 1. | Elayadath Veettil Nalini, D/o.Late KunhIRaman, |) | |
| | aged 70 |) | |
| 2. | Elayadath Veettil KunhIRaman, S/o.Late KunhIRaman, |) | |
| | aged 57 |) | |
| 3. | Elayadath Veettil Sathyabhama, D/o.Late KunhIRaman, |) | |
| | aged 54 |) | Plaintiffs |
| 4. | Elayadath Veettil Vijayakumar, S/o.Late KunhIRaman, |) | |
| | aged 50, rep. by PA Holder Elayadath Veettil |) | |
| | KunhIRaman (Plaintiff No.2), S/o.Late KunhIRaman, |) | |
| | aged 57 |) | |
| | All are residing at Madayi Amsom, Vengara Desom, |) | |
| | P.O.Payangadi, Kannur Taluk, Kannur Dt. |) | |
| | Vs. | | |
| 1. | Elayadath Veettil Padmavathi, W/o.Gangadharan.K.V, |) | |
| | aged 63, Kunnaru, Pattuvam.P.O, Pattuvam amsom |) | |
| | desom, Taliparamba Taluk, Kannur Dt. |) | |
| 2. | Elayadath Veettil Premavalli, W/o.Govindan.V.V, |) | |
| | aged 60, Vannarath, Kullappurama, P.O.Vilayancode, |) | Defendants |
| | Cheruthazham amsom desom, Payyannur Taluk, |) | |
| | Kannur Dt. |) | |

This suit coming for hearing before me in the presence of Sri.Sunilkumar.K.G, advocate for the plaintiffs; and S/Sri.Nicholas Joseph, P.Rajendrakumar and E.K.Ramakrishnan, advocates for the defendants and the Court delivered the following:

JUDGMENT

Suit is for partition and separate possession.

2. **Plaint runs as follows:-** The plaint schedule property is consisted of three items, originally belonged to one Paravathi Amma vide partition deed No. 1787/1978. After the intestate death of Parvathi Amma on 31.08.1996, the plaint schedule property devolved upon her husband KunhIRaman, plaintiffs and defendants who are their children, one Elayedath Veetil Pavithran and one Elayedath Veetil

Padmanabhan. Kunhiraman bequeathed his said share in favour of plaintiff No.2 and 4 along with some other properties vide will deed No.55/2005 of Pazhayangadi SRO. Rights of Padmanabhan and Pavithran assigned their shares in favour of plaintiff No.3 and 2 vide document 1639/2002 and 805/2013 of Pazhayangadi SRO. Plaintiffs do not want to continue with the co-ownership of the properties. Their request for partition was refused by the defendants. Hence the suit.

3. Defendant Nos.1 & 2 entered into appearance and filed written statement taking up following contentions. The parties to suits are Marumakathayees, hence they are governed by law of Marumakkathayam in the matter of inheritance. The plaintiff and the defendants are entitled for equal shares in the plaint schedule property. Since, Kunhiraman is not legal heir of Parvathi Amma as per the Marumakkathayam law of inheritance, Kunjiraman will not inherit anything from her. Hence the Will deed executed by Kunhiraman has no legal existence. So, the entire property including the property covered by the Will deed as share of the Kunhiraman are to be partitioned. They, accordingly sought for partition.

4. From the above rival pleadings following issues were settled for trial.

1. Is the plaint schedule property partible, if so what are the shares to which parties are entitled?

2. Reliefs and costs.

5. To prove the plaint claim, 2nd plaintiff was examined as PW1 and one witness was examined as PW2 and Ext.A1 to Ext.A10 were marked. Defendants adduced neither oral nor documentary evidence.

6. Heard both sides. Perused the records.

7. **Issue No.1:** Here, the plaintiff and defendants are the children of one Parvathi Amma who left behind the plaint schedule property. There are three items of properties sought to be partitioned. Plaintiffs say that plaint schedule property is partible by excluding the property covered by Ext.A5 Will executed by their father and Ext.A4 and Ext.A6 documents. Contesting Defendants did not raise any objection against Ext.A4 and Ext.A6. But they are opposing the execution and legal validity of Ext.A5. Hence, the property covered under Ext.A5 also to be partitioned.

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2 plaintiff filed proof affidavit in tune with the averments of the plaint. The derivation of title, relationship between the parties, death of Parvathi Amma, execution and genuinity of Ext.A4 and Ext.A6 documents are not disputed. Only dispute with regard to the certain extent of property covered by Ext.A5 Will.

8. Here, the Will is seen executed by Kunhiraman who is the husband of Parvathi Amma with regard to the share devolved upon him as the legal heir of Parvathi Amma. Whether the Kunhiraman will succeed Paravathi Amma is the question? Which is the law governing this field assumes significance at this juncture. Whether it is marumakkathayam law or the Hindu Succession Act, 1956?. The learned counsel for the plaintiffs contended that Since Parvathi Amma expired in the year 1996, law regarding inheritance of her property is the Hindu Succession Act,1956. As per Sec.15 of Hindu Succession Act of 1956, her husband Kunhiraman is the class I heir. So he is entitled his share. Sec.7 of Hindu Joint Family Abolition Act, excludes the operation of Marumakathyam Law in the matter of their inheritance. Hence, according to him, the Ext.A5 Will has all legal sanctity in the eye of law.

9. *In turn*, learned counsel for the contesting defendants argued that though Parvathi Amma expired in the year 1996 after the commencement of Hindu Succession Act as well as Joint Hindu Family Abolition Act of 1976, the law governing her property is covered by Marumakkathayam. Because she obtained the property prior to the enactment of Joint Hindu Family Abolition Act,1976. Sec.17 of Hindu Succession Act of 1956, reserves the operation of Marumakkathayam law in the matter of governance of the law of inheritance of marumakkathayees. Since the parties are maniyanees who is none other than Nairs, they are governed by Marumakkathayam Law. As per Marumakkathayam Law, the husband is not a legal heir who is entitled for any share of deceased wife. Accordingly, Kunhiraman will not get any share. Consequentially, he cannot execute Ext.A5 Will deed, it was canvassed.

10. I analysed the rival submission, with the assistance of materials placed before me. In '**Shakara Varrier's Law of Marumakkathayam**', it has been clearly stated that "*Maniyanees are Nairs of Northern Malabar and governed by Malabar Marumakkathayam Law*". On going through Sec.17 of the Hindu Succession of Act,

1956, it can be seen that the law regarding inheritance of Nairs are governed by Marumakkathayam law. This question was elaborately considered in **Madhavi Amma v. Kalyani Amma 1982 KLT 964** and **Chellamma v. Madhavi Amma 1993 (1) KLJ187**. Both these authorities concurrently held that “*the law regarding inheritance of property which acquired prior to 1976 is the Marumakkathayam Law*”. I did not find out any other authorities to hold a different preposition. Hence, it is clear that, so far as the inheritance of the property of Parvathi Amma, the law is the Marumakkathayam Law, where in the husband is not a legal heir succeeding his wife. When no property will be devolved upon Kunhiraman, of the Parvathi Amma as per the Marumakkathayam Law, when Will deed Ext.A5, executed by Kunhiraman in favour of plaintiff No.1 and 2 has no legal sanctity in the eye of law. It will no way confer any right, title or interest pertaining to the extent of the property belonged to the Parvathi Amma. Regarding the attestation of Ext.A5 Will, PW2 has clearly stated regarding the attestation. There is no serious challenge against the physical and mental capacity of the Kunhiraman to execute Ext.A5. To get the legal sanctity of the Will, mere the attestation alone is sufficient. It is trite law that one person can assign the property to another person, only when he has got title over the property, via principle of *Nemo debet quad non habet*. As I already stated, since Kunhiraman has no title over the property, the Will deed executed by him, Ext.A5 has no legal sanctity. Regarding, the execution of other documents, Ext.A4 and Ext.A6, no dispute has been raised. The property is found to be, hence, partible including the extent of property covered by Ext.A5 Will as well as excluding the property covered by Ext.A4 and Ext.6. Hence this issue is found thus.

11. **Point No.2** :- Upon my findings in the above issue, I reach conclusion that plaint schedule properties are liable to be partitioned in to 8 equal shares among the children of Parvathy Amma, by metes and bounds. Plaintiffs no.1 and 4, and the defendants are entitled to get 1/8 shares. On the strength of Ext.A4 and A6, plaintiffs no.2 & 3 are entitled to get 2/8 shares.

In the result, Suit is preliminary decreed as follows.

1. plaint schedule properties are partitioned by metes and bounds. Plaintiffs no.1 and 4, and the defendants are entitled to get 1/8 shares each. Plaintiffs no.2 & 3 are entitled to get 2/8 shares each.

2. Parties are permitted to make application U/O 20 R.18 of CPC,1908 for final decree.

3. Costs are made easy.

(Dictated to the Confidential Assistant, transcribed and typed by him, correctedth and pronounced by me in open court, this the 14 day of August, 2023).

Sd/-
Sub Judge

Plaintiffs' Exhibits:-

A1	30.04.1958	Certified copy of Jenm deed No.729/1958 of SRO, Pazhayangadi
A2	21.12.1962	Certified copy of Jenm deed No.2676/1962 of SRO, Pazhayangadi
A3	04.05.1978	Partition deed No.1787/1978 of SRO, Taliparamba
A4	26.06.2002	Release deed No.1639/2002 of SRO, Pazhayangadi
A5	31.08.2005	Will No.55/2005 of SRO, Pazhayangadi
A6	11.03.2013	Release deed No.805/2013 of SRO, Pazhayangadi
A7	11.10.2018	Basic tax receipt
A8	11.10.2018	Basic tax receipt
A9	22.03.2006	Death Certificate
A10	19.09.1996	Death Certificate

Plaintiffs' Witness:-

PW1	Kunhiraman,A.V
PW2	Gopalan

Defendants' Exhibits & Witness:- Nil

Sd/-
Sub Judge