

IN THE COURT OF THE SUBORDINATE JUDGE OF PAYYANNURPresent:- **Sri.Unnikrishnan.M.S**, B.A., LL.B., Subordinate JudgeTuesday, the 26th day of November, 2024(05th Agrahayana, 1946)**ORIGINAL SUIT No.73 OF 2022**

Sujatha.T.A, aged 65 years,]
W/o. K.Narayanan, Payyannur amsom desom,]
P.O.Payyannur, Payyannur Taluk,] **Plaintiff**
Kannur District-670307.]

Vs.

1. Balamani.T.A, aged 61 years,]
W/o. Padmanabhan.P, Pattadathil House,]
West Temple Road, Payyannur amsom]
desom, Mahadeva Gramam, Payyannur] **Defendants**
(PO), Payyannur Taluk,]
Kannur District-670307.]

2. Suleksha.T.A, aged 53 years,]
W/o. Kunhikkannan, Thekke Anidil House,]
Near Temple Road, Payyannur amsom]
desom, Payyannur (PO), Payyannur Taluk,]
Kannur District-670307.]

3. Sunil Kumar.T.A, aged 53 years,]
S/o. Late Lakshmi Amma, Near Naval]
Academy Gate, Naval Academy Road,]
Vrindavanam, Ramanthali amsom desom,]
Ramanthali(PO), Payyannur Taluk,]
Kannur District-670308.]

4. Kavitha.T.A, aged 50 years,]
W/o. Narayanan Nambiar, Safal Square,]
Silicon Audio Video Technology Private]

Limited, 102, 103 Prime Shoppers,]
Opp.Safal Square, Vesu, Soorat Udhna]
Magdhalla Road, Gujrat-395007.

This suit coming for final hearing before me in the presence of Sri.M.G.Dinesh, Advocate for the Plaintiff; and of S/Sri.Sajith Kumar.S, Arya.V and Valsala Potty, Advocates for the Defendant Nos.1, 3 and 4; and of S/Sri.K.Vijayakumar and Muralikrishnan.C.P, Advocates for the Defendant No.2 and the Court delivered the following:

J U D G M E N T

Suit is for partition.

2. **Plaint runs as follows:-** The plaint schedule property jointly belonged to one Thekke Aniyedil Lakshmi Amma who is the mother of parties to the suit and her sister Narayani Amma vide document No.2863/1968 of Payyannur SRO. The undivided $\frac{1}{2}$ share of Narayani Amma was transferred in the name of the plaintiffs and defendant vide document No.107/1991. Lakshmi Amma and Narayani Amma expired. Thereafter, the property belonged to Lakshmi devolved upon the parties to the suits are the absolute joint co-owners of the suit property, whereas each one are to $\frac{1}{5}$ th share. The plaintiff did not want to continue with the co-ownership and he sought for partition which did not yield any result which constrained her to issue a legal notice on 29.08.2022 issue notice to the defendant seeking partition which also in deaf ears. Hence, the suit.

3. Defendant Nos.1, 3 & 4 entered into appearance and filed written statement consenting for partition. They, but, contended that

there is residential building in the suit property which is also liable for partition.

4. D2 also entered into appearance and filed written statement claiming rights over the residential building wherein she and her husband have been residing for the last 15 years. She also did not oppose the partition of the property by metes and bounds.

5. 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.

6. To prove the plaint claim, plaintiff was examined as PW1 and Ext.A1 to Ext.A9 were marked. The 2nd defendant was examined as DW1 and Ext.B1 to Ext.B25 were marked.

7. Heard both sides. Perused the records.

8. **Issue No.1:** In this partition suit, plaintiff seeks 1/5th share of the co-ownership property. The plaintiff filed proof affidavit in tune with the plaint averments and Ext.A1 to Ext.A9 documents were marked. Defendants 1,3 and 4 says that they did not oppose the partition and but they only seek partition of the residential building also. D2 says that she has been residing in the residential building in the plaint schedule property which has to be allotted to her. She is also not opposing the partition. DW1 filed proof affidavit in tune with the written statement and Ext.B1 to Ext.B25 were marked. Before going to the disputed question, I may cull out some admitted facts between the parties. The relationship between parties, genealogy and title of the predecessor are

admitted. It is pertinent to note that none of the defendants are opposing partition of the property. So also proportion of 1/5th share each. The only question remains for consideration is whether the residential building is partible as claimed by D1, D3 and D4. So also D2 is making lie on the building.

9. Now I may look into the documentary evidences tendered by both sides. Ext.A1 is the certified copy of settlement deed No.2863/1968 which shows the joint title of the their predecessor of the parties to the suit. Ext.A2 is the will deed No.107/1991 which shows the undivided share of the Narayani Amma was transferred in the name of the parties to the suit. Ext.A3 and Ext.A4 are the death certificate of Narayani Amma and Lakshmi Amma dated 14.12.2013 and 09.11.2020 respectively. Ext.A5 is the succession certificate of the Lakshmi Amma and Ext.A6 is the tax receipts. Ext.A7 is the copy of legal notice dated 29.08.2022 and Ext.A8 (a) to Ext.A8(d) are the receipts of the postal department of Ext.A7. Ext.A9, Ext.A9(b) are the postal receipt showing receipt of Ext.A7 by the defendant. The defendants documentary evidence consists of Ext.B1 to Ext.B25. Ext.B1 to Ext.B18 are tax receipt in the name of Lakshmi Amma and Narayani Amma. Ext.B19 is the electricity Bill. Ext.B20 is the bill of some electrical equipment purchased by the 2nd defendant. Ext.B21 is also a bill of paint purchased by the 2nd defendant. Ext.B22 and Ext.B23 are the ration card of D2 and Ext.B24 is the pass book of gas connection in the name of D2 and Ext.B25 is the voter ID of D2. In ancillary question with respect to the absolute joint title of the plaint schedule property. The question arises whether the undivided share of Lakshmikutty Amma and Narayani Amma fell in the hands of the parties to the suit vide Ext.A2 document. As per the case of the plaintiff, the undivided share of

the Narayani Amma who is the sister of the mother of the parties in the suit fell in their hands vide Ext.A2. Ext.A2 is the Will deed No.107/1999. No attesting witnesses were examined to prove the Ext.A2 document as contemplated under Sec.68 of Indian Evidence Act r/w 63(c) of Indian Succession Act, 1924. So my view, Ext.A2 document is not legally proved. Accordingly, no assignment of the ½ share of the Narayani Amma will come into the hands of the parties to the suit through Ext.A2. Ext.A5 as per the case of both sides, Narayani Amma was the sister of their mother. They both of them have no case they are other legal heirs of the Narayani Amma. So Ext.A3 document shows that Narayani Amma was expired on 14.01.2023. So her undivided share obviously devolves upon her sister Lakshmi Amma whereby Lakshmi Amma became absolute owner of the property. After the death of Lakshmi Amma on 09.11.2020 as evident from Ext.A4, the entire property fell into the hands to the parties to the suit. It means Ext.A2 will deed is not proved, the entire property will be devolved upon the parties to the suit through Lakshmi Amma, their mother. Now the only question arise for consideration is whether the D2 is entitled to reside in the property. Now I may look into nature of the claim raised by D2. D2 says that she has been residing in the property for last 15 years along with her family. So she claims said house as part of her respective share. Whether the such claim is an equity or reservation is the question. The concept of the equity and reservation have been discussed in **Pathumma and others v. Muhammed 2015(1) KHC, 750**. In that case, the Hon'ble High Court elaborately discussed with respect to the concept of reservation and equity. The wisdom of the Hon'ble High Court say that a person is claiming concept of reservation means a exclusion of particular item of property from

partition. Whereas concept of equity is that allotment of certain item of property to a particular co-owner based on equitable principle. That being so, here the claiming raised by the 2nd defendant cannot be said as reservation, but it can be said as equity. She has no case that the building was constructed by her. But she has a specific case that she has been residing in the property. Whether her equitable claim is entertainable is the next question. PW1 in cross examination admitted that she, husband and her family have been residing in Coimbatore. 1st defendant is residing at Devagram. D3 is residing at Ramanthali. D4 and her family is residing at Gujarath. D2 and her family have been residing in the residential building in the plaint schedule property for the last 15 years. Her mother and maternal aunt have been residing in the said building and they expired there also. DW2 who claims allotment of the house also tendered evidence to the extent that she has been residing there in the said building. Nothing was brought out to discredit her version. There is no evidence tendered by any of the defendants including the plaintiff that DW1 has got another residential building. That being so, evidence herein clearly indicate that D2 and her family have been residing in the residential building in the plaint schedule property and all other parties to the suit are residing away from the plaint schedule property. It is equally pertinent to note from the evidence that since the mother of the plaintiff and her sister have been residing in the plaint schedule property and D2 was residing along with them. Obviously she might have looked after them. Especially on the points that other parties to the suit are away from the property. So as matter of equity, I find that D2 is entitled to allot the house. Of course, such allotment is not possible at this stage. But, it can be allotted after

valuation of the entire property. That can be done only after the preliminary decree and at the stage of final decree. No other dispute left for adjudication. Once, the parties to the suit are not disputing with respect to the partibility of the plaint schedule property and also the proportion of their respective shares. Hence, the plaint schedule properties is found to be partible by metes and bounds. This issue is answered accordingly.

10. **Point No.2** :- Upon my findings in the above issue, I reach conclusion that plaint schedule properties are liable to be partitioned in to 5 equal shares by metes and bounds.

In the result, Suit is preliminary decreed as follows.

1. The plaint schedule properties are partitioned 5 equal shares by metes and bounds.
2. Plaintiff is entitled to get 1/5 share in the plaint schedule property.
3. Defendants 1 to 5 are also entitled to get 1/5th shares each.
4. The residential building in the plaint schedule property is allotted to the 2nd defendant subject to the valuation of the property to be done at the time final decree application.
5. Parties are permitted to make application U/O 20 r. 18 of CPC,1908 for the purpose of effecting the physical actual partition of the property.
6. Costs are made easy.

(Dictated to the Confidential Assistant, transcribed and typed by him, corrected and pronounced by me in open court, this the 26th day of November, 2024).

Sd/-
Civil Judge(Senior Division)

Plaintiff's Exhibits:-

- A1 09.01.1947 Copy of Jenm deed No.2863/1968.
- A2 11.10.1991 Copy of Will deed.
- A3 31.12.2013 Death Certificate of Narayani Amma.
- A4 04.12.2020 Death Certificate of Lakshmi Amma.
- A5 09.05.2022 Legal Heirship Certificate.
- A6 30.07.2003 Tax Receipt.
- A7 29.08.2022 Lawyer Notice.
- A8 (a) 30.08.2022 Postal receipt.
- A8(b) 30.08.2022 Postal receipt.
- A8(c) 30.08.2022 Postal receipt
- A8(d) 30.08.2022 Postal receipt.
- A9 (a) 31.08.2022 Acknowledgment Card.
- A9(b) 31.08.2022 Acknowledgment Card.

Plaintiff's Witness:-

PW1 Sujatha.T.A

Defendants' Exhibits:-

B1	03.12.1984	Tax Receipt.
B2	05.10.1996	Tax Receipt.
B3	28.12.2011	Tax Receipt.
B4	03.11.2007	Tax Receipt.
B5	23.05.2024	Tax Receipt.
B6	10.06.2004	Tax Receipt.
B7	09.05.2005	Tax Receipt.
B8	10.02.2006	Tax Receipt.
B9	23.01.2008	Tax Receipt.
B10	28.05.2009	Tax Receipt.
B11	-----	Tax Receipt.
B12	20.08.2013	Tax Receipt.
B13	31.12.2013	Tax Receipt.
B14	08.01.2016	Tax Receipt.
B15	01.02.2018	Tax Receipt.
B16	21.01.2019	Tax Receipt.
B17	15.03.2022	Tax Receipt.

B18	26.07.2024	Tax Receipt.
B19	26.07.2024	Electricity Bill.
B20	08.08.2018	Bill (Rainbow Electrical and Plumbing).
B21	08.08.2018	Bill (Varnam traders).
B22	-----	Ration Card.
B23	-----	Ration Card.
B24	----	Domestic Gas Customer Card.
B25	----	Voters list.

Defendants' Witness:-

DW1 T.A.Sulekha

Sd/-

Civil Judge (Senior Division)