

IN THE COURT OF THE MUNSIFF OF PAYYANNUR

Present: Smt.Greeshma.A.S, Munsiff, Payyanur

Tuesday, the 9th day of January, 2024
19th day of Pousha, 1945

ORIGINAL SUIT No.27 OF 2022

Ancy Thomas, D/o.Joseph Joseph, aged 50	]	
years, Arakkal House, Nellikutty.P.O,	]	Plaintiff
Chemberi, Eruvessy Amsom Desom,	]	
Taliparamba Taluk, Kannur District.	]	

Vs.

1. Mercy Sebastian, D/o.Joseph Joseph,	]	
Aged 62 years, Nhondimakkal House,	]	
Alakkode. P.O, Alakode Amsom,	]	
Ottathai desom, Taliparamba Taluk,	]	
Kannur District.	]	
2. Thressiamma Thomas, D/o.Joseph Joseph,	]	
Aged 55 years, Kandathil House,	]	
Karuvanchal. P.O, Vayatthuparambu,	]	
Naduvil Amsom Desom,	]	
Taliparamba Taluk, Kannur District.	]	
3. Lisamma Johnson, D/o.Joseph Joseph,	]	
Aged 52 years, Naduthottiyil House,	]	
Karippal P.O., Chapparapadavu, Kuttoor	]	
Amsom, Karippal Desom,	]	Defendants
Taliparamba Taluk, Kannur District.	]	
4. Moly, W/o.Joseph.K.J @ Babychan, aged	]	
59 years, Kuzhinhalikunnel House,	]	
Kannivayal.P.O, Chittarikkal Amsom	]	
Desom, Kasargod District.	]	
5. Mobin Joseph,	]	
S/o.Joseph K.J @ Babychan, Aged about	]	
38 years, Kuzhinhalikunnel House,	]	

- Kannivayal P.O, Chittarikkal Amsom desom, Kasargod District.]
 6. Melbin Joseph, S/o.Joseph K.J @ Babychan, Aged about 36 years, Kuzhinhalikunnel House, Kannivayal P.O, Chittarikkal Amsom desom, Kasargod District.]
 7. Honeymol Joseph, D/o.Joseph.K.J @ Babychan, Aged about 34 years, Kuzhinjalikunnel House, Kannivayal P.O, Chittarikkal Amsom desom, Kasargod District.]

This suit is coming on the 3rd day of January 2024 for final hearing before me in the presence of S/Sri.A.V.Sajith Kumar and Danish Lukose, Advocates for the Plaintiff; and the Defendants' name called absent and set exparte; and having stood over to this day for consideration and the Court delivered the following:

J U D G M E N T

The suit is filed for partition.

2. The gist of averments in the plaint are as follows:-

Plaint schedule property originally belonged to Joseph Joseph who is the father of the plaintiff and defendants No.1 to 3 and the deceased Joseph K.J @ Babychan as per the document No.12243/1976 from the Land Tribunal Payyanur. Annakkutty Joseph, wife of the Joseph Joseph died on 26.02.1995, and on 25.05.1999 Joseph K.J Babychan also died. Joseph K.J Babychan's wife and children are the defendants

No.4 to 7. After the death of Joseph Joseph the right over the plaint schedule property devolved upon the co-ownership of the plaintiff and defendants. In the plaint schedule property the 1/5th share allotted to the plaintiff, 1/5 share allotted to defendants No.1 to 3 and 1/5 share each allotted to defendants No.4 to 7.

3. Joseph Joseph, father of the plaintiff constructed a shop in the plaint schedule property. In the same one Prema is doing scrap business in the plaint schedule shop. The defendants No.4 to 7 are managing the plaint schedule property. Up to two years ago defendants No.4 to 7 has given share of income from the plaint schedule shop to the plaintiff. Now nothing is given to the plaintiff.

4. There are so many inconveniences to the plaintiff to keep the plaint schedule properties in joint possession and co-ownership. Hence, so many times and at last on 10.09.2021 the plaintiff demanded for her share from the defendants but they evaded from the partition by saying lame excuses. Hence the suit.

5. Defendants name called absent and set ex-parte.

6. The plaintiff filed proof affidavit in lieu of chief examination and Ext.A1 was marked. When the plaintiff was called upon to establish the case, the plaintiff was present and he was examined as PW1. He filed proof affidavit in lieu of the chief examination in tune with the plaint averments. He has produced

Ext.A1 to support her case. Ext.A1 is the copy of purchase certificate No.12243/76. The oral evidence of PW1 and the document produced by PW1 remain unchallenged. There is no evidence before this court and no documents produced so as to determine the mesne profit as prayed. The only contention in the plaint is that one Prema is conducting scrap business in the shop situated in the plaint schedule property and plaintiff used to get a share from the business up to two years before filing of this suit. And now the defendants are not giving any share from the aforesaid business. Thus there is no evidence rather than mere contention as stated above. Hence I am not inclined to allow the relief for mesne profit. Hence, I find that the plaintiff has established her case and is entitled to a decree partly as follows.

In the result, suit is decreed by passing preliminary decree as follows :-

1. The plaint schedule property is ordered to be partitioned and 1/5 share allotted to the plaintiff.
2. The cost of the suit shall be borne out of the estate.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court, this the 9th day of January 2024).

Sd/-
MUNSIFF

Plaintiff's Exhibit:-

A1	26-12-1976	Certified Copy of Purchase Certificate 12243/1976 issued by Land Tribunal, Payyanur under Right to Information Act.
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Plaintiff's Witness:-

PW1	Ancy Thomas
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Defendants' Exhibit and Witness :- Nil

Sd/-
MUNSIFF