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| Suppl.<br>D13. | Karal Puthilon Anitha, D/o. late<br>Meenakshi, aged 52 years, Housewife,<br>Koyodan Veedu, Nuchiyad amsom,<br>Parikkalam desom, P.O. Parikkalam-<br>670705.<br><i>Defendant No. 1 died. Suppl. D9 to D13<br/>are the LRS of Defendant No.1 impleaded<br/>and amended as per Order in IA. 3/2023<br/>and 4/2023 dated 05-04-2023.</i> | ]<br>]<br>]<br>]<br>]<br>]<br>]<br>]<br>]<br>]<br>] |  |
|----------------|--|---|--|

This Suit coming on the 13<sup>th</sup> day of March, 2026 for hearing before me in the presence of Sri. K. Mukundan, Advocate for the Plaintiff ; of Sri.Prajeesh. P, Advocate for the Defendant No. 3 and 5; of S/Sri.K.VPavithran and A.P. Manoj Kumar, Advocates for the Defendant No.4 ; of Sri. Janeesh Thottathil, Advocate for the Suppl. Defendant No. 9 to 13 ; Defendant No. 2, 6, 7 and 8 remained absent, declared exparte ; Defendant No. 1 reported died and having stood over for consideration till this day; the court delivered the following:

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

The suit is for the partition of the plaint schedule property.

2. **Plaintiff's case:-** The plaint schedule property originally belonged to Karal Puthilon Chiruthayi Amma. By virtue of a registered Marupattam Deed dated 31.05.1948, bearing Reg. No. 1368/1948 of Uliyil SRO, she constructed a house therein and resided with her husband and children. Chiruthayi Amma passed away in 1993, leaving behind her children, the plaintiff, defendant Nos. 1 to 5, and one Padmanabhan Nair, who died in 2008. The legal heirs of Padmanabhan Nair are defendant Nos. 6, 7, and 8. The house has since collapsed due to age.

3. Defendant No. 4, who was serving in the Army, obtained a registered Settlement Deed dated 31.10.1987 bearing Reg. No. 2304/1987 of SRO, Uliyil, in his favour from his mother. The plaintiffs allege that this Deed was procured fraudulently, as Chiruthayi Amma was misled into believing she was executing a mortgage Deed. The document stated that her husband had the right to take income from the property and to reside in the house. Within two weeks, she realised the fraud and executed a Deed of cancellation dated 31.10.1987, bearing Reg. No. 2419/1987 of SRO, wherein she categorically stated that the earlier Settlement Deed was never delivered to defendant No. 4 nor any Title Deed thereof. Defendant No. 4 was aware of this cancellation.

4. The original of the Settlement Deed remained with Chiruthayi Amma until her terminal days, when she handed it over to her son, Padmanabhan Nambiar. After his death, defendant No. 4 obtained the original document from Padmanabhan Nambiar's legal heirs. In these circumstances, the plaintiffs contend that they are not bound by the fraudulent Settlement Deed and seek partition and release of their shares in the plaint schedule property.

5. Defendants were served with a summons. Defendant Nos. 2, 6, 7 and 8 remained absent and were declared ex parte. Defendant Nos. 1, 3, 4, and 5 appeared and filed vakkalath. Subsequently, Defendant Nos. 1, 3, 4, and 5 filed the written statement. Later, it was reported that Defendant No. 1 was no longer alive. As a result, their legal heirs were impleaded as Defendant Nos. 9 to 13, in accordance with the order in IA No. 3/2023. Defendant Nos. 9 to 13 were served with a summons, appeared, and filed vakkalath and a written statement.

6. **Defendants' case:-** Defendant No. 4 has filed a written statement contending that the suit is not maintainable. He admits the devolution of the property but denies that Chiruthayi Amma enjoyed the property until her death. He asserts that he obtained the property under a Gift Deed. In February 1987, his wife Smt. Preetha gave birth to their first child. After 40 days, they came to their native place, and while Preetha and the child stayed at her paternal house, defendant No. 4 returned to Jammu and Kashmir. At that time, his father, Kuttiyappa Nambiar, with the knowledge of Preetha and Chiruthayi Amma, prepared and registered a Gift Deed dated 15.10.1987. The original Gift Deed was collected from the Sub Registry by Kuttiyappa Nambiar and handed over to Preetha the next day. After perusing it, she returned it to Kuttiyappa Nambiar. Defendant No. 4 states that he bore the expenses for registration. The gift was executed with the knowledge and consent of all siblings.

7. Subsequently, a notice was served on defendant No. 4 and Kuttiyappa Nambiar by Sri V. P. G. Nambiar. A reply notice was issued, but since the notice was not served on defendant No. 4, he did not send any reply. Defendant No. 4 argues that a Gift Deed once accepted cannot be cancelled by executing a unilateral document. He also denies the allegation that Chiruthayi Amma believed the document to be a Mortgage Deed, pointing out that he was in Jammu at the relevant time. After the gift, defendant No. 4 took possession of the property, which was managed by Kuttiyappa Nambiar until his death. He further contends that after the notice was issued through counsel V. P. G. Nambiar, Chiruthayi Amma's right to challenge the Gift Deed became barred by

limitation. On these grounds, he submits that the suit is liable to be dismissed.

8. Defendant Nos. 1, 3, and 5 jointly filed a written statement. Accordingly, the property is liable to be partitioned, and they paid separate court fees for separate allotments.

9. Defendant Nos. 9 to 13 filed a written statement. Accordingly, the property is divisible, and they paid separate court fees for the individual allotment of the property's partition.

10. **Evidence:** From the plaintiff's side, PW1 and PW2 were examined. Exhibits A1 to A7 were marked. From the defendant's side, DW1 was examined. Exhibits B1 to B5 series, B6 and B7 were marked.

11. Heard both sides.

12. **Issues arise for consideration:**

1. *Whether the plaint schedule property is in joint ownership and possession of plaintiff and defendants?*
2. *Whether the plaint schedule property is available for partition?*
3. *If so, what is the share to which each party is entitled to?*
4. *Reliefs and costs?*

13. **Issue Nos. 1 to 3:-** The plaint schedule property originally belonged to Chiruthayi Amma, who constructed a house there pursuant to a registered Marupattam Deed dated 31.05.1948. Upon her death in 1993, the property devolved upon her children, namely, the plaintiff, defendant Nos. 1 to 5, and Padmanabhan Nair, who died in 2008, leaving

defendants 6 to 8 as his legal heirs. The plaintiffs allege that defendant No. 4, while serving in the Army, fraudulently procured a Settlement Deed in 1987 from Chiruthayi Amma by misrepresenting it as a Mortgage Deed. Realising the fraud, Chiruthayi Amma executed a cancellation Deed within the same year, declaring that the earlier Settlement Deed was never delivered to defendant No. 4. The plaintiffs contend that the Deed relied upon by defendant No. 4 is void and unenforceable, and therefore seek partition and release of their shares in the property.

14. Defendant No. 4, however, admits the transfer of the property but denies that Chiruthayi Amma continued to enjoy it until her death. He claims that he received the property under a valid Gift Deed dated 15.10.1987, executed by Chiruthayi Amma with the knowledge and consent of his father, Kuttiyappa Nambiar, and the siblings. He states that the original Deed was collected from the Sub Registry by his father and handed over to his wife, Preetha, who returned it after perusal. Defendant No. 4 asserts that he bore the expenses of registration, that the gift was accepted, and that possession was subsequently taken and managed by his father until his death. He further contends that a Gift Deed once accepted cannot be cancelled unilaterally, and that any challenge to the Deed is barred by limitation, particularly after notice was issued through counsel and no legal action was initiated. On these grounds, he maintains that the suit should be dismissed.

15. To establish the case on behalf of the plaintiff, PW1 was examined. PW1 is the plaintiff himself. Exhibits A1 to A7 were marked. Exhibit A1 is a certified copy of the registered Marupattu Deed No. 1368/1948. Exhibit A2 is a certified copy of the registered Settlement

Deed dated 23.04.1987. Exhibit A3 is a certified copy of the cancellation Deed bearing No. 2419/1987. Exhibit A4 is the original tax receipt, and Exhibit A5 is the payment receipt issued by the Karshaka Thozhilali Kshemanidhi Board. Exhibit A6 is the inland letter bearing a postal seal dated 10.12.1987. Exhibit A7 is the certified copy of Document No. 1695/1988.

16. On the side of the defendant, DW1, the wife of defendant No. 4, was examined. Defendant No. 4 himself did not mount the witness box, citing difficulty in recollecting matters due to old age. He was present before the court at the time of examination, and DW1 acknowledged this fact. The plaintiffs argued that an adverse inference should be drawn against defendant No. 4 for not entering the box. However, since DW1 was examined and gave evidence showing familiarity with family affairs and transactions, there is no basis for raising an adverse inference solely because defendant No. 4 did not take the stand. It must, however, be noted that DW1 can only depose to facts within her personal knowledge.

17. The plaintiffs argue that the alleged Gift Deed dated 15.10.1987, registered on 16.10.1987, marked as Exhibit A2 (certified copy) and Exhibit B3 (original), was executed through fraud on Chiruthayi Amma, who believed she was executing a Mortgage Deed. Defendant No. 4, however, claimed that he was in Jammu and Kashmir at the time of execution and therefore could not have committed any fraud. The plaintiffs further contend that even if a Gift Deed was executed, there was no valid acceptance as required under Section 122 of the Transfer of Property Act. They argue that unless acceptance is

proven, the Deed cannot be considered valid, and in such cases, cancellation by a Deed is allowed. They highlight that the cancellation Deed, Exhibit A3, was executed within 16 days of the alleged gift, before any valid acceptance could occur, and that mutation was not carried out nor possession taken by defendant No. 4.

18. DW1 deposed that she learned of the execution of the Deed through the father of defendant No. 4, who handed over the document to her when she was at her native place after childbirth. She examined it and returned it, which she claims constitutes valid acceptance. Defendant No. 4 argued that he was his mother's favourite child and thus received the property, although it is admitted that defendant No. 5 was the youngest child, while defendant No. 4 was only the youngest son. After executing Exhibit A3, Chiruthayi Amma issued a notice to defendant No. 4 and Kuttiyappa Nambiar, marked as Exhibit B1, with a reply marked as Exhibit B2. Exhibit B1 indicates that she claimed possession of the original Deed and denied having parted with it, asserting ownership and possession of the property.

19. The plaintiffs contend that Kuttiyappa Nambiar intended for defendant No. 4 to acquire all properties, and when Exhibit A3 was executed, he retaliated by settling his own properties in favour of defendant No. 4, which they term a revenge document. DW1, however, stated that she provided money for the execution and registration, handed over by her husband, and was aware of the transaction. Counsel for defendant No. 4 argued that the plaintiffs cannot simultaneously claim fraud and lack of acceptance, since the cancellation was executed within 15 days of the gift. He further contended that the Deed granted a

life interest to Kuttiyappa Nambiar, who lived with Chiruthayi Amma and was aware of acceptance, thus negating the plea of non-acceptance.

20. In support of their arguments, the plaintiffs relied on *Auseep Fernandez v. Tina Benn*, 2023 (24) Clause 2 ICO 1892, wherein it was held that a settlement deed once complete cannot be cancelled unilaterally unless the deed itself reserves such a right upon contingencies. They also referred to *Kakkoth Radha v. Bathakkathalakkal Batlak Musthafa*, 2024 KHC OnLine 492, which held that an averment in the gift deed that absolute possession was handed over to the donee, subject to the donor's right of residence, is sufficient proof of acceptance.

21. On considering the rival contentions, it is clear that the plaintiffs dispute the validity of Exhibit B3 on the grounds of fraud and lack of acceptance, while the defendants rely on DW1's testimony and the recitals in the deed to prove acceptance. The principle established in *Auseep Fernandez v. Tina Benn* states that unilateral cancellation of a valid Settlement Deed is void unless authorised by the Deed itself. Similarly, *Kakkoth Radha v. Bathakkathalakkal Batlak Musthafa* affirms that recitals indicating delivery of possession serve as proof of acceptance. Applying these precedents, the Cancellation Deed executed by Chiruthayi Amma cannot, by itself, invalidate a Gift Deed that is otherwise complete and accepted. The key question, therefore, is whether acceptance was in fact established within the meaning of Section 122 of the Transfer of Property Act. DW1's testimony and the recitals in Exhibit B3 suggest acceptance was effected, and once acceptance is proven, unilateral cancellation cannot stand. In family transfers, presumption of acceptance bolsters validity: "Where a gift is

made by parent to a child, there is a presumption of acceptance of the gift by the donee." Reliance can be placed on *K. Balakrishnan Vs. K. Kamalam - 2004 1 Supreme 169*. Furthermore, the execution out of love and affection, registration, acceptance, and delivery (even symbolically) perfect the gift, prohibiting unilateral cancellation. For instance: "The law is very clear that when the donor executed a Gift Settlement Deed duly registered before Sub-Register, the same is accepted by the donee; if the donor wishes to cancel the said Gift Settlement Deed, he must approach the Civil Court for cancellation, challenging the registered Gift Settlement Deed, rather than executing a Cancellation Deed before the Sub-Registrar." Reliance can be placed on *Avuthu Rangamma Died Per Lr vs Avuthu Rama Subba Reddy - 2025 0 Supreme(AP) 138*. According to the plaintiff, Chiruthayi Amma executed the cancellation document. The plaintiff now claims there was no valid acceptance. However, the burden of proof regarding non-acceptance of the gift rests with the plaintiff. In that case, the burden is on the plaintiff to prove it. Reliance can be placed on *K. Saraswathy Ammal (Died) Vs. Kalyanasundaram - 2024 0 Supreme(Mad) 869*. But no such evidence was adduced by the plaintiff.

22. Further relying on Exhibit B1 and Exhibit A3, the allegation raised by the plaintiffs is that the document was executed under fraud, with Chiruthayi Amma being misled into believing that she was executing only a Mortgage Deed. However, the claim is that the original Deed remained with Chiruthayi Amma. This raises a significant inconsistency: when a Mortgage Deed is executed in favour of another person, the original document would ordinarily be retained by the mortgagee, not the mortgagor. The allegation that the original Deed,

along with other documents, continued to remain in the custody of Chiruthayi Amma does not align with the theory of fraud or misrepresentation. If indeed she was deceived into executing a Mortgage Deed, it is difficult to imagine that the alleged perpetrator of fraud would permit her to retrieve the original Deed from the Registrar's Office after registration and retain it in her possession. At any cost, they would make sure that Chiruthayi Amma was not aware of those facts.

23. This contradiction weakens the plaintiff's claim of fraud. The retention of the original Deed by Chiruthayi Amma indicates she had control over the document and questions the narrative that she was misled into executing a Mortgage Deed. Furthermore, neither the Cancellation Deed nor the notice issued specifies when or how she became aware of the document's true nature. If she had read and understood the document immediately after registration, such a woman would have read it before signing. Moreover, if fraud had truly taken place, the logical step would have been to file a suit for cancellation rather than issuing notices. The absence of such a suit, along with the improbability of the alleged fraudster allowing the executant to retain the original Deed, supports the defendant's argument that the Gift Deed was validly executed and accepted.

24. In light of these circumstances, the allegation of fraud appears unsubstantiated, and the possession of the original Deed by Chiruthayi Amma is inconsistent with the plaintiff's version of events. This strengthens the defendant's case that the Gift Deed was genuine and operative.

25. Admittedly, a notice was issued by Chiruthayi Amma after the execution of the Cancellation Deed, in which she stated that the cancellation had been effected. A reply notice was issued to her by Kuttiyappa Nambiyar. The question that arises is why Chiruthayi Amma did not initiate a suit for the cancellation of the alleged Gift Deed. It is also relevant that no notice was issued to the beneficiary of the Settlement Deed prior to the execution of the Cancellation Deed.

26. The defendant's case is that the gift was validly accepted and possession was with him. In the written statement, he stated that until the death of Kuttiyappa Nambiar, Chiruthayi Amma lived in the house in the plaint schedule property, and thereafter resided with her children in rotation. After her death, due to the absence of defendant No. 4 in the native place, the house was not maintained, and consequently, a portion collapsed. Defendant No. 4 claims that he later received information that the house had become a nuisance to the locality and therefore demolished it. The plaintiffs did not adduce evidence to disprove this version. There is no pleaded case that the house fell on its own, nor was there any denial of these pleadings in the affidavit filed in lieu of examination-in-chief.

27. On the side of the defendant, certain tax receipts in his name for the years 2016 to 2018 were produced. The suit was filed in January 2019. On the side of the plaintiff, another tax receipt dated 18.09.2018 was produced, while Exhibit B5(c) dated 11.05.2018 stands in the name of defendant No. 4. These documents show that both sides attempted to establish possession through tax receipts, but the suit was filed only in 2019, after these entries.

28. In discussion, the absence of a suit for cancellation by Chiruthayi Amma, despite issuing notices, weakens the plaintiff's contention that the deed was void ab initio. The production of tax receipts by both sides indicates competing claims of possession, but the defendant's receipts predate the suit and cover multiple years, lending weight to his assertion of possession. The plaintiff's reliance on unilateral cancellation is undermined by the principles laid down in *Auseep Fernandez v. Tina Benn*, 2023 (24) Clause 2 ICO 1892, which held that a settlement deed once complete cannot be cancelled unilaterally unless the deed itself reserves such a right. Similarly, *Kakkoth Radha v. Bathakkathalakkal Batlak Musthafa*, 2024 KHC OnLine 492, clarified that recitals in a Gift Deed indicating delivery of possession constitute sufficient proof of acceptance. Applying these precedents, the cancellation deed executed by Chiruthayi Amma cannot invalidate a Gift Deed that was otherwise complete and accepted. The tax receipts and the absence of a cancellation suit further support the defendant's case.

29. In conclusion, the plaintiffs have not succeeded in establishing fraud or lack of acceptance, and the unilateral Cancellation Deed cannot stand against the principles affirmed in the cited case law. The defendant's possession and acceptance are corroborated by documentary evidence, and the suit is therefore liable to be dismissed.

Issue Nos.1 to 3 are found against the plaintiff.

30. **Issue No. 4:-** Considering the facts and relationship between the parties, this Court is of the view that both parties shall bear their respective costs.

**In the result,** suit is dismissed. No orders as to costs.

(Dictated to Adalat-AI, arranged in proper form by Confidential Assistant, corrected and pronounced by me in open court on this day, the 16<sup>th</sup> day of March 2026).

Sd/-  
**MUNSIFF**

**Appendix:-**

**Plaintiff's Witnesses:-**

PW1 : Sri. Karal Puthalon Vijayan.

PW2 : Smt. Radhamani. P.

**Plaintiff's Exhibits:-**

|     |            |   |
|-----|------------|---|
| A1. | 31-05-1948 | Certified copy of Document No. 1368/1948 of SRO, Uliyil.  |
| A2. | 15-10-1987 | Certified copy of Document No. 2304/1987 of SRO, Uliyil.  |
| A3. | 31-10-1987 | Certified copy of Document No. 2419/1987 of SRO, Uliyil.  |
| A4  | 18-09-2018 | Land tax receipt issued by the Village Office, Payam in the name of Karal Puthilon Chiruthey amma (died) daughter Meenakshi Amma and others.                        |
| A5. | 18-09-2018 | Receipt issued by Kerala Agricultural Worker's Welfare Fund Board, Thrissur in the name of Karal Puthilon Chiruthey amma (died) daughter Meenakshi Amma and others. |
| A6. | 10-12-1987 | Inland letter sent by the Defendant No. 4 to the Plaintiff.   |
| A7. | 12-09-1988 | Certified copy of Document No. 1695/1988 of SRO, Uliyil.  |

**Defendant's Witnesses:-**

DW1 : Sri. Puthalath Preetha.

**Defendant's Exhibits:-**

|        |            |   |
|--------|------------|---|
| B1.    | 13-11-1987 | Copy of Lawyer notice issued by Advocate V.P.G. Nambiar.  |
| B2.    | 18-01-1988 | Reply notice issued by Advocate V. Rajagopalan to Advocate V.P.G. Nambiar.                          |
| B3.    | 15-10-1987 | Document No. 2304/1987 of SRO, Uliyil.  |
| B4     | 26-05-1976 | Purchase Certificate issued by Land Tribunal Iritty.  |
| B5.    | 30-12-2015 | Land Tax receipt issued by Village Office, Payam in the name of Karal Puthilon Purushothaman.       |
| B5(a). | 16-04-2016 | Land Tax receipt issued by Village Office, Payam in the name of Karal Puthilon Purushothaman.       |
| B5(b). | 16-05-2017 | Land Tax receipt issued by Village Office, Payam in the name of Karal Puthilon Purushothaman.       |
| B5(c). | 11-05-2018 | Land Tax receipt issued by Village Office, Payam in the name of Karal Puthilon Purushothaman.       |
| B6.    | 18-02-2019 | Possession Certificate issued by Village Office, Payam in the name of Karal Puthilon Purushothaman. |
| B7.    | 31-03-1993 | Certified copy of Document No. 768/1993 of SRO, Uliyil.   |

**Court Exhibits:-** Nil.

Sd/-  
MUNSIFF

*kps.*

Fair/Copy of Judgment  
in OS No.41/2019.  
Dated : 16-03-2026.