





Suppl. D16.	Ajmal Thayakath, S/o. Muhammed Kunhi, 44 years, Business, Thayakath House, Valapattanam.	]	
Suppl. D17.	Rafeeque C, S/o. Kunhi Muhammad, aged 49 years, Business, Chalil House, Eachur.	]	
Suppl. D18.	Bushara. C.P, W/o. Rafeeque, 41 years, No Occupation, Chalil House, Eachur.	]	
Suppl. D19.	Muhammad Askar Pommanachi Valiyakath, S/o. Abootti, 34 years, Business, Magrikh, Kallur, Mattannur.	]	
Suppl. D20	Abdul Khadar E, S/o. Assinar, 47 years, Coolie, PP house, Mambaram, Kelaloor.	]	
Suppl. D21	Shahala Nasreen. K, D/o. Sakkariya, 26 years, No Occupation, Alfajar, Kuthuparamba, Naravoor.	]	
Suppl. D22.	Muhammad Mansoor. U.C, EKT House, Kottayam Malabar.	]	
Suppl. D23.	Nisar Chovvakkay, Fathimas, Kuthuparamba.	]	
Suppl. D24.	Noushad Chovvakkaran, Fathimas, Kuthuparamba.	]	
Suppl. D25.	Sayid. M.M, Meethal Mattal House, Peringathur.	]	
Suppl. D26.	Sherin Shahana KK, Alighar, Nirmalagiri.	]	
Suppl. D27.	Nabeesa Musthafa, W/o. Musthafa, Rajina Cottage, 56 years, No occupation, Anjarakandy, Kolathumala. <b><i>Suppl. D16 and D27 impleaded and amended as per Order in IA. 12/2025 and 13/2025 dated 25-06-2025.</i></b>	]	

This Suit coming on the 13<sup>th</sup> day of January, 2026 for hearing before me in the presence of Sri. E. Sanil Kumar, Advocate for the Plaintiff ; of Sri. K. Mukundan, Advocate for Defendant No 4 to 10 and 12 ; of Sri. Sebastian Thomas, Advocate for Defendant No. 13 and 14 ; of Sri. Zirajudheen. A.K. Advocate for Defendant No. 16 to 18, 20, 25 and 26 ; of Sri. C.P. Athul, Advocate for the Defendant No. 27 ; Defendant Defendant No.2, 3, 11, 19, 21 to 24 called absent set exparte ; Defendant No. 15 not entered in appearance ; 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 a partition.

2. **Plaintiff's case:-** The plaint schedule property originally belonged to Leela, daughter of Kalyani alias Madhavi, under a registered Deed of 1980 executed by Kuniyil Sankaran and also under a Gift Deed executed by Janaki, Yesoda, Kausalya and Sathi. Leela died unmarried, and thereafter the entire plaint schedule property devolved upon her brother and sisters, namely Nanu, Janaki, Yashoda, Kausalya and Sathi, who became co-owners in joint possession. After the death of Nanu, his undivided share devolved upon his daughters Vinodini, Vijayalakshmi, Usha and Pankajam. After the death of Janaki, her undivided share devolved upon her children, Vasantha, Gouri, Chandran, Sasi and Preetha. After the death of Kausalya, her undivided share devolved upon her children, Gireesh and Jyothish. Thus, the plaintiff and defendants are in joint ownership and possession of the plaint schedule property. The plaintiff, unwilling to continue in common and joint ownership, made enquiries regarding the present status of the property and discovered that, without her knowledge, the

property had been fraudulently partitioned among the defendants, except defendant Nos. 1, 2 and 3, through a Partition Deed executed in 2012. Hence, the suit is filed seeking partition of the plaint schedule property and separate possession of the plaintiff's lawful share.

3. The defendants were properly served. Defendant No. 1 and Defendant No. 2 did not appear and remained absent, and they were declared ex parte. Defendant No. 3 and No. 11, although served, failed to contest and were also declared ex parte. Defendant Nos. 4 to 10 and 12 appeared and filed written statements to contest and defend the suit. Subsequently, it was reported that Defendant No. 1 had passed away, and her legal heirs were brought on record as Defendant Nos. 13 and 14 pursuant to the order in IA 2/2025. Later, Defendant No. 15 was added as a necessary party to the suit in accordance with the Order in IA 9/2024. Defendant No. 15 transferred the property to several others, and all such transferees, claiming an interest in the plaint schedule property, were added as Defendant Nos. 16 to 27 in accordance with the order in IA 12/2025. These defendants were served with summons. Defendant Nos. 19, 21, 22, 23, and 24 remained absent and were declared ex parte. Defendant Nos. 16, 17, 18, 20, 25, 26, and 27 filed vakalath. Defendant No. 27 filed a written statement, and subsequently, Defendant Nos. 16, 17, 20, and 26 also filed written statements jointly.

4. **Defendants' case:-** The defendant Nos. 4 to 10 and 12 jointly filed a written statement contending that the suit is not maintainable and is liable to be dismissed. They assert that Shankaran, the author of Will No. 5/1980 of SRO, Kuthuparamba, was the first husband of Kalyani alias Madhavi mentioned in the plaint. Nanu, father of the plaintiff and defendant Nos. 1 to 3, was born prior to the marriage of

Kalyani alias Madhavi, and therefore he is not a legal heir of the deceased Leela. On that basis, the plaintiff and defendant Nos. 1 to 3 cannot claim any right over the plaint schedule property.

5. It is further contended that after Leela's death, the plaint schedule property was divided among her four sisters, namely Janaki, Yashoda, Kausalya, and Sathi, under a Partition Deed of 2019, and each of them sold their respective plots to Muhammed Aslam, who is named as defendant No. 15 in the suit. The allegation that the plaint schedule property is in joint possession of the plaintiff and the defendants is denied as false. According to the defendants, none of the original parties to the suit is in possession of the plaint schedule property, and neither the plaintiff nor defendant Nos. 1 to 3 have any right of possession.

6. The defendants also point out that Kalyani alias Madhavi had transferred 48.5 Cents of property in favour of her son Nanu, and the plaintiff and defendant Nos. 1 to 3 continue to be in possession of that property after Nanu's death as his legal heirs. It is stated that Kalyani alias Madhavi had only transferred 11 Cents each to her daughters Leela, Janaki and Kausalya, whereas a larger portion was gifted to Nanu. The defendants argue that Nanu was not a full brother of Leela but only of half-blood, and therefore he cannot inherit from Leela. Since Nanu was not the son of Kalyani alias Madhavi's husband, he cannot inherit through him either. On these grounds, the defendants maintain that the suit is without merit and is liable to be dismissed.

7. The defendant Nos. 16, 17, 20, and 26 jointly filed a written statement contending that the suit is not maintainable and should be dismissed. They deny the plaintiff's claim to a 1/20th share in succession as false and legally unsustainable. According to them, the

plaint schedule property originally belonged to Leela, and after her death, the property devolved upon her lawful legal heirs, as evidenced by Legal Heirship Certificate No. 6263/2007/84 issued by the Tahsildar, Thalassery Taluk. That certificate contains no entry showing Nanu as a legal heir of Leela, and the absence of his name decisively undermines the plaintiff's asserted chain of title.

8. The defendants further state that they purchased the property for valuable consideration under a registered Sale Deed, relying on public records and paying the consideration through legitimate banking channels. They rely on the certified legal heirship certificate issued by the Tahsildar, Thalassery, which formally records Janaki, Yashoda, Kausalya, and Sathi as the legal heirs of the late Leela. On this basis, they plead that the plaintiff's challenge to the instrument is time-barred, as Article 59 of the Limitation Act prescribes a three-year period for suits seeking cancellation or setting aside of instruments. The plaintiff has not pleaded any facts sufficient to postpone the date of knowledge.

9. It is also argued that the plaintiff's prolonged silence and failure to assert any claim during the period of continuous enjoyment of the property by the defendants amount to acquiescence, thereby preventing the plaintiff from seeking relief at this stage. Consequently, the defendants assert that the suit is without merit and should be dismissed.

10. Defendant No. 27 filed a written statement. Therefore, the suit is not maintainable. He is a bona fide purchaser and has bought the property after examining the legal heirship certificate issued by the Taluk Tahsildar, Thalassery. Consequently, the suit ought to be dismissed.

11. **Evidence:-** From the side of the plaintiff, PW1 was examined and Exhibits A1 to A8 were marked. From the side of the defendants, DW1 was examined, Exhibits B1 to B3 were marked.

12. Heard both sides.

13. Issues arise for consideration:

1. *Whether the plaintiff has any partible interest over plaint schedule property?*
2. If yes, what are the share to which each parties are entitled to?
3. Reliefs and costs?

14. **Issue No. 1:-** The plaint schedule property originally belonged to Leela, daughter of Kalyani alias Madhavi, under a registered Deed of 1980 and a subsequent Gift Deed. Leela died unmarried, and the property devolved upon her siblings Nanu, Janaki, Yashoda, Kausalya, and Sathi, who became co-owners. After Nanu's death, his undivided share devolved upon his daughters Vinodini, Vijaya Lakshmi, Usha, and Pankajam. After Janaki's death, her share devolved upon her children Vasantha, Gowri, Chandran, Sasi, and Preetha. After Kausalya's death, her share devolved upon her children Gireesh and Jyothish. Thus, the plaintiff and defendants became joint owners in possession of the property. The plaintiff, unwilling to continue in common ownership, discovered that without her knowledge, the property had been partitioned among certain defendants through a Deed executed in 2012. The suit was therefore filed seeking partition and separate possession of her lawful share.

15. Defendant Nos. 4 to 10 and 12 jointly argued that Nanu was not a legal heir of Leela, being only of half blood, and therefore neither

the plaintiff nor defendant Nos. 1 to 3 could claim any share. They claimed that after Leela's death, the property was partitioned among her sisters and subsequently sold to defendant No. 15. Defendant Nos. 16, 17, 20, and 26 further relied on Legal Heirship Certificate No. 6263/2007/84 issued by the Tahsildar, Thalassery, which did not include Nanu as a legal heir of Leela. They contended that they purchased the property for valuable consideration under registered Deeds, relying on public records, and that the plaintiff's challenge is barred by limitation under Article 59 of the Limitation Act. Thus, the plaintiff seeks partition of the plaint schedule property, while the defendants contest her entitlement, raising objections on grounds of succession, maintainability, limitation, and estoppel.

16. It is undisputed that Leela acquired the plaint schedule property under a registered Deed of 1980 executed by Kuniyil Sankaran and also through a Gift Deed executed by Janaki, Yesoda, Kausalya, and Sathi. The plaintiff's case is that Nanu, being the child of Leela and Sankaran, is entitled to a share in the property, and that the other co-owners omitted the legal heirs of Nanu when partitioning the property. The plaintiff contends that, as Nanu had a legal right over the property, his heirs are not bound by the subsequent documents executed without their participation.

17. The property was partitioned under Exhibit A6 Partition Deed in 2012 by Janaki, Yashoda, Kousu, and Sathi. The legal heirs of Kousu are listed as defendant No. 5, the legal heirs of Janaki as defendant Nos. 6 to 10, the legal heirs of Yashoda as defendant No. 4, and the legal heirs of Kousu also as defendant Nos. 11 and 12. Later, in 2014, Janaki, Yashoda, Kousu, and Sathi jointly sold their respective shares in the property to defendant No. 15, as shown in Exhibit B2 document.

Defendant No. 15 then transferred the property to various other persons, eventually making defendant Nos. 16 to 27 the transferees and current possessors of the property.

18. Exhibit A3 is the document through which Leela obtained the property listed in the plaint schedule, with Item No. B specifically included in the schedule. In Exhibit A3, the name of Nanu does not appear. The document was executed in 1980, although Nanu had already passed away in 1978. This fact was confirmed by PW1, the plaintiff, during examination. It is noteworthy that the plaint itself does not specify the date or year of Nanu's death.

19. The plaintiff's case is that after Leela's death, as an unmarried woman, the property passed to her brother and sisters, namely Nanu, Janaki, Yashoda, Kausalya, and Sathi, and that they held the property as co-owners. However, it is admitted that Nanu predeceased Leela. Legally, succession occurs only upon the death of the propositus, and a person who has already died cannot be regarded as a co-owner or heir at the time of succession. Therefore, there is no basis for the property to pass to Nanu, and the plaintiff's claim of title through Nanu is fundamentally flawed. Accordingly, the plaintiff's chain of succession is contradicted by the admitted fact of Nanu's earlier death, and the claim of co-ownership through him is invalid.

20. It is worth noting that Exhibit A3, the document relied upon by the plaintiff, is a Will. In law, a Will can only be admitted as evidence if it is proved in accordance with statutory requirements. In the present case, the plaintiff has not taken proper steps to prove Exhibit A3 so that it can be considered in evidence by the court. Therefore, Exhibit A3 cannot be admitted. A Legal Heirship Certificate marked as Exhibit B3 has also been produced. Although such a

certificate is not conclusive proof of legal heirship, it is relevant to note that the plaintiff's consistent case is that Kalyani was unmarried at the time she gave birth to Nanu. If that is correct, Nanu is only a half-blood brother of Leela and thus not entitled to succeed to her property. No evidence has been presented on either side to prove or disprove this point.

21. In such a situation, the court cannot simply accept the defendants' plea as established. The burden of proof lies on the party asserting exclusion. Without cogent evidence, such as certified death records, genealogical proof, or statutory heirship documents, the plea remains unsubstantiated. Consequently, the finding must be that the defendants have not discharged their burden to prove that Nanu was excluded from succession, and the plaintiff's claim cannot be rejected solely on the basis of an unproven plea.

22. Therefore, although the plaintiff's claim to title may seem questionable, the defendants' assertion that Nanu was not a legal heir of Leela is not adequately supported by the evidence before the court, and thus cannot be accepted as proven. The issue remains unresolved in favour of the defendants, and the court must proceed on the basis that the exclusion of Nanu has not been legally established.

23. A portion of cross examination of PW1 by the counsel for the defendant Nos. 4 to 10 and 12 is Reiterated below. നാണുവിന്റെ അച്ഛന്റെ പേര് തുനിയൻ ശങ്കരൻ എന്നാണ്. ടിയാന് 6 മക്കളുണ്ടായിരുന്നു. ഏറ്റവും മുത്തത് ജാനകിയാണ്. രണ്ടാമത്തെ ആളാണ് എന്റെ അച്ഛൻ നാണു. ശങ്കരൻ എന്നവരുടെ ഭാര്യയുടെ പേര് കല്യാണി എന്ന മാധവി എന്നാണ്. കല്യാണി എന്ന മാധവിക്ക് 5 മക്കളെ ഉണ്ടായിരുന്നുള്ളൂ എന്ന് പറഞ്ഞാൽ ശരിയല്ല. കല്യാണി എന്ന മാധവി നാണുവിനെ മകനെപ്പോലെ കരുതി എന്ന് പറഞ്ഞാൽ മകൻ തന്നെയാണ്.

നാണുവിന്റെ ഡെത്ത് സർട്ടിഫിക്കറ്റാണ് Ext. A8 ആയി ബഹുമാനപ്പെട്ട കോടതി മുൻപാകെ ഹാജരാക്കിയത്. അതിൽ ടിയാന്റെ അച്ഛന്റെ പേര് ശങ്കരൻ എന്ന് രേഖപ്പെടുത്തി. എന്നാൽ അതിൽ അമ്മയുടെ പേര് എന്ന കോളത്തിൽ രേഖപ്പെടുത്തിയിട്ടില്ല എന്നാണ് കാണിച്ചിട്ടുള്ളത്, നാണു മരിക്കുമ്പോൾ കല്യാണി ജീവിച്ചിരിപ്പുണ്ട്. നാണു ശങ്കരന്റെ മകനാണെന്നും കല്യാണിയുടെ മകനല്ല എന്നും പറഞ്ഞാൽ ശരിയല്ല.

24. From the portion of evidence reiterated in cross-examination, it emerges that the defendant Nos. 4 to 10 and 12 initially pleaded that Nanu was not the son of Kalyani. However, in their pleadings as well as during hearing they shifted their stand, admitting that Shankaran was connected to Kalyani but asserting that Nanu was born before her marriage, thereby making him only of half-blood in relation to Leela. The deposition refers to Ext. A8 death certificate, which records Shankaran as Nanu's father but leaves the column for mother's name blank. The witness also stated that Kalyani treated Nanu as her son, but the defendants pressed the point that biologically he was not her child.

25. Though the case raised by defendant Nos. 4 to 10 and 12 were Nanu was not the son of Kalyani at the time of cross-examination, during hearing, they submitted that Nanu is the son of Kalyani, but not the son of Kuniyil Shankaran and Nanu was born before the marriage of Kalyani. Hence, Nanu is only a half blood to Leela and is not entitled to access Leela's property. This line of cross-examination is significant because it shows inconsistency in the defence case. The original plea was an outright denial of Nanu's relationship to husband of Kalyani, whereas in evidence, it was modified to a claim of half-blood. Under succession law, half-blood relationships do carry inheritance rights, though they rank after full-blood heirs. The defendants' attempt is to

exclude Nanu entirely, but their own admissions weaken that position. The absence of the mother's name in Ext. A8 is not conclusive proof, and the statement that Kalyani treated Nanu as her son supports the plaintiff's version of family recognition.

26. Thus, while the defendants argue that Nanu was born before Kalyani's marriage and therefore cannot inherit Leela's property, the evidence adduced is not decisive. The inconsistency between pleadings and testimony, coupled with the lack of conclusive documentary proof, leaves the matter unresolved. The court must weigh whether the plaintiff has discharged the burden of proving Nanu's entitlement, and whether the defendants have successfully rebutted it. At present, the record shows only partial support for the defendants' claim, not a complete exclusion of Nanu's status.

27. The pleadings and evidence have been carefully considered. It is undisputed that Leela obtained the plaint schedule property under Exhibit A3. The plaintiff's case rests on succession through Nanu, while the defendants contest his status as a legal heir. Though the defendants have pleaded that Nanu was not entitled to succeed, no sufficient evidence has been adduced to conclusively establish his exclusion. Ext. A8 death certificate records Shankaran as Nanu's father, and though the mother's name is not shown, the testimony indicates that Nanu was treated within the family as a son. The inconsistency in the defence stand, shifting from denial of relationship to asserting half-blood, weakens their plea. In the absence of cogent proof, the court cannot accept that Nanu was excluded from succession. Thus, the Nanu heirs are entitled to succeed Kalyani.

28. The Partition Deed of 2012 and subsequent transfers have been relied upon by the defendants. However, these instruments were

executed without including the plaintiff and other heirs through Nanu. A Partition Deed that omits a co-owner cannot bind them. The transferees claim possession, but possession without title cannot override the lawful rights of a co-owner. The plea of limitation under Article 59 is not sustainable, as the plaintiff seeks partition, and her right as a co-owner is a continuing one. Acquiescence and estoppel cannot operate to extinguish a lawful share in joint family property when succession rights are established.

29. On the question of joint possession, PW1 admitted that the property is currently in the hands of transferees. However, in law, possession by one co-owner is considered possession on behalf of all unless ouster is proven. No evidence of ouster has been provided. The plaintiff has paid the court fee under section 37(2) of the Kerala Court Fees and Suit Valuation Act, which is correct when asserting co-ownership. Failing to pay the proper Court fee alone is not enough to dismiss a meritorious case. It is also a settled principle of law that the Court fee issue should be decided at the time of filing, during issue settlement, before trial begins, and at the appellate level. After the trial has commenced, a trial court cannot dismiss a suit solely due to lack of proper Court fee.

30. In the result, the court finds that the plaint schedule property devolved upon 5 branches, namely the heirs of Nanu, Janaki, Yashoda, Kausalya and Sathi. Each branch is entitled to one-fifth share. The plaintiff, representing the branch of Nanu, is entitled to one-fifth share in the plaint schedule property. The suit is decreed accordingly, directing the division of the plaint schedule property into 5 equal shares and allotment of one such share to the plaintiff.

31. Defendant Nos. 16 to 27 are subsequent transferees and holders of portions of the plaint schedule property. The exact shares held by each of them have not been specifically pleaded in the plaint nor established by evidence before this court. What is clear is that they claim through the co-owners who executed the Partition Deed and subsequent Sale Deeds. Since the plaintiff has succeeded in establishing her entitlement to one-fifth share in the plaint schedule property, the transferees cannot claim a better title than their vendors. At the same time, they are bona fide purchasers for consideration, and equity requires that their interests be protected to the extent possible.

32. Accordingly, that the plaint schedule property shall be divided into 5 equal shares, 1 such share being allotted to the plaintiff. The specific allotment of shares among defendant Nos. 16 to 27, who are transferees, shall be worked out at the stage of final decree proceedings. At that stage, the Commissioner shall take into account the extent of possession and enjoyment of each transferee and shall propose division in such a manner as to minimize disturbance to bona fide purchasers, while ensuring that the plaintiff's one-fifth share is carved out and delivered.

33. **Issue No. 2:-** The plaint schedule property shall be divided into 5 shares. Plaintiff, defendant Nos. 2 to 3, 13 and 14 are entitled to 1 share jointly. Defendant No. 4 is entitled to 1 share. Defendant No. 5 is entitled to 1 share. Defendant Nos. 6 to 10 are entitled to 1 share jointly. Defendant Nos. 11 and 12 shall be entitled to 1 share jointly.

34. **Issue No. 3:-** The plaint schedule, considering the facts of this case, the scope is of the view that both parties shall bear their respective costs.

**In the result,** a preliminary decree is passed as follows:

1. Plaintiff schedule property shall be divided into 5 equal shares by metes and bounds.
2. Plaintiff, defendant Nos. 2, 3, 13 and 14 are entitled to 1 share jointly.
3. Defendant No. 4 is entitled to 1 share on payment of requisite court fee.
4. Defendant No. 5 is entitled to 1 share on payment of requisite court fee.
5. Defendant Nos. 6 to 10 are entitled to 1 share on payment of requisite court fee.
6. Defendant Nos. 11 and 12 are entitled to 1 share jointly on payment of requisite court fee.
7. The question of apportionment among defendant Nos. 16 to 27 shall be decided in the final decree proceedings, with due regard to their possession and equities.
8. The costs of the suit shall come out of the estate.
9. For taking steps under Order 20 Rule 18.

(Dictated to Adalat-AI, arranged in proper form by Confidential Assistant, corrected and pronounced by me in open court on this day, the 21<sup>st</sup> day of January 2026).

Sd/-  
MUNSIFF

**Appendix:-**

**Plaintiff's Witnesses:-**

PW1 : Smt. M. Usha.

**Plaintiff's Exhibits:-**

A1.	16-01-1975	Certified copy of documents No. 92/1975 of SRO, Kuthuparamba.
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A2.	03-12-1977	Certified copy of documents No. 106/1977 of SRO, Kuthuparamba. (Subject to proof)
A3.	07-02-1980	Certified copy of documents No. 5/1980 of SRO, Kuthuparamba. (Subject to proof)
A4.	23-04-1985	Documents No.725/1985 of SRO, Kuthuparamba.
A5.	18-03-1998	Certified copy of documents No. 726/1998 of SRO, Kuthuparamba.
A6.	18-01-2012	Certified copy of documents No. 434/2012 of SRO, Kuthuparamba.
A7.	03-02-2014	Documents No. 342/2014 of SRO, Kathirur.
A8.	25-09-2013	Death Certificate of P. Nanu, issued by Secretary, Pinarayi, Grama Panchayath.

**Defendant's Witnesses:-**

DW1 : Smt. Nabeesa Musthafa.

**Defendant's Exhibits:-**

B1.	18-01-2012	Certified copy of documents No. 434/2012 of SRO, Kuthuparamba.
B2.	12-06-2013	Certified copy of documents No. 1989/2013 of SRO, Kuthuparamba.
B3.	17-05-2007	Notarized copy of Legal heirship Certificate No.6263/2007/B4 issued by Tahsildar, Thalassery.

**Court Exhibits:-** Nil.

Sd/-  
MUNSIFF

Fair/Copy of Judgment  
in OS No.99/2018.  
Dated : 21-01-2026.