

**IN THE COURT OF THE MUNSIFF OF KUTHUPARAMBA**

Present:- Smt. Athira Nair., Munsiff.

Thursday, the 26<sup>th</sup> day of March, 2026/ 5<sup>th</sup> Chaithra, 1948.

**ORIGINAL SUIT No.256 OF 2019.**

|     |   |   |             |
|-----|---|---|-------------|
| 1.  | P.V. Shobha @ Shobhana, W/o. Krishnan, aged 57 years, No occupation, Pokkan Valappil house, Keezhoor Amsom, Payancherry Desom, Iritty (PO). | ] | Plaintiff.  |
|     |   | ] |             |
|     |   | ] |             |
|     |   | ] |             |
| 2.  | K.K.Smitha D/o. Krishnan, aged 37 years, No occupation, Karuvante Kunnummal house, Keezhoor Amsom, Payancherry Desom, Iritty (PO).          | ] |             |
|     |   | ] |             |
|     |   | ] |             |
|     |   | ] |             |
| Vs. |   |   |             |
| 1.  | K.K. Ammalu, W/o. Govindan, aged 60 years, No occupation, Nalupurakkal house, Pazhassi Amsom, Mattannur Desom.                              | ] | Defendants. |
| 2.  | K.K.Balan, S/o. Lakshmi, aged 50 years, No occupation, Karuvante Kunnil house, Pazhassi amsom, Kara Desom.                                  | ] |             |
|     |   | ] |             |
| 3.  | K.K. Chandri, W/o. Chandran, aged 45 years, No occupation, Karuvante Kunnil house, Pazhassi amsom, Kara Desom.                              | ] |             |
|     |   | ] |             |
|     |   | ] |             |

This Suit coming on the 19<sup>th</sup> day of March, 2026 for hearing before me in the presence of S/Sri. C.K. Lohithakshan and K. Roja, Advocates for the Plaintiffs ; of S/Sri. K.V. Pavithran and A.P. Manoj Kumar, Advocates for the Defendant No. 1 and 3 ; Defendant No. 3 was appointed as the Guardian of Defendant No. 2 as per the Order in IA. 1/2022 dated 11-07-2023 and having stood over for consideration till this day; the court delivered the following:

## J U D G M E N T

Suit is one for partition.

2. **Plaintiffs' case:-** The 1<sup>st</sup> plaintiff is the wife of the defendant's brother, Krishnan, and the 2<sup>nd</sup> plaintiff is the daughter of Krishnan, born to the 1<sup>st</sup> plaintiff. The plaint schedule property originally belonged to Krishnan, and his mother, Lakshmi. After the death of Krishnan and Lakshmi, the plaintiffs and defendants jointly possessed the plaint schedule property. The plaintiffs have recently come to know that the defendants are attempting to sell the property without their knowledge and to appropriate the benefits exclusively for themselves. The defendants have no right to alienate the property in this manner. Hence, the present suit is filed seeking the relief of partition.

3. **Defendants' case:-** Defendant No. 2 was reported to be a mentally insane person, and therefore defendant No. 3 was appointed as his guardian. Defendants Nos. 1 to 3 entered an appearance and filed a written statement contending that the suit is not maintainable. It is their case that plaintiff No. 1 is not the wife of their deceased brother Krishnan, and plaintiff No. 2 is not the daughter of Krishnan. They assert that Krishnan was a bachelor who died on 20.06.1995, and his mortal remains were buried on the southern side of the house situated in the plaint schedule property. They further contend that the mortal remains are available there and can be utilised for conducting a DNA test to establish that plaintiff No. 2 is not the child of Krishnan.

4. According to the defendants, plaintiff No. 1 was originally married to another Krishnan, a person from Palakkad. When he left the place, she went along with one Mr. Babu. Subsequently, she filed a

petition before the Judicial First Class Magistrate, Mattannur Court, seeking maintenance, in which Babu argued that he was not her husband, and the petition was dismissed. The defendants assert that the plaintiffs have never jointly possessed the plaint schedule property and that they have no rights over it. On these grounds, they contend that the suit is liable to be dismissed.

5. **Evidence:-** From the side of the plaintiff, PW1 and PW2 were examined. Exhibits A1 to A7 were marked. From the side of the defendant, Defendant No. 3 was examined as DW1.

6. Heard both sides.

7. **Issues arise for consideration:**

1. *Whether the plaint schedule property is partible?*
2. *What are the shares to which each party is entitled?*
3. *Reliefs and costs?*

8. **Issue Nos. 1 and 2:-** The plaintiffs' case is that the 1<sup>st</sup> plaintiff is the wife of Krishnan, the brother of the defendants, and the 2<sup>nd</sup> plaintiff is the daughter born to them. The plaint schedule property originally belonged to Krishnan and his mother. After the death of Krishnan and his mother, Lakshmi, the plaintiffs and defendants were jointly in possession of the property. The plaintiffs allege that the defendants are now attempting to alienate the property without their consent and to appropriate the benefits exclusively. They contend that the defendants have no right to do so, and hence the suit has been filed seeking partition.

9. The defendants' case is that defendant No. 2 is mentally unfit, and defendant No. 3 was appointed as his guardian. Defendant Nos. 1 to 3 submitted a written statement arguing that the suit is not maintainable. They deny the relationship between the plaintiffs and Krishnan, asserting that Krishnan was a bachelor who died on 26.09.1995 and that his remains were buried on the southern side of the house within the plaint schedule property. They claim that the remains could be used for DNA testing to establish that plaintiff No. 2 is not his child. It is further argued that plaintiff No. 1 was married to another Krishnan from Palakkad, later lived with a Mr Babu, and even filed a maintenance petition against him before the Judicial First Class Magistrate, Mattannur, which was dismissed. According to the defendants, the plaintiffs have never jointly possessed the plaint schedule property and hold no rights over it. Based on these grounds, they contend that the suit should be dismissed.

10. After setting out the pleadings of the parties, the first question to consider is whether the 1st plaintiff is the legally wedded wife of Krishnan, the deceased brother of the defendants. Closely related to this is the second question, namely, whether the 2nd plaintiff is the daughter born to Krishnan and the 1st plaintiff, or whether, as contended by the defendants, Krishnan died a bachelor. It is significant to note that the plaint contains no specific pleading regarding the date of marriage between the 1st plaintiff and Krishnan. The 1st plaintiff has not appeared in the witness box; instead, the 2nd plaintiff was examined as PW1. In the affidavit filed in lieu of her examination-in-chief, PW1 offers no explanation for the absence of the 1st plaintiff. The 1st plaintiff would have been the most suitable witness to affirm that she was married to

Krishnan and that the 2nd plaintiff was their child. Nevertheless, the plaintiffs have neither pleaded nor proved these vital facts.

11. This is a case where, as early as in the written statement, the defendants argued that their brother, the deceased Krishnan, was a bachelor, and that plaintiff No. 1 is not his wife and plaintiff No. 2 is not his daughter. They even proposed that the mortal remains of Krishnan, buried in the property listed in the plaint schedule, could undergo DNA testing to confirm the truth. However, no petition was filed by the plaintiffs to seek such scientific proof of paternity.

12. Turning to the evidence presented by the plaintiffs, the birth certificate of plaintiff No. 2 has been produced, showing that she was born on 16.09.1982. Exhibit A2 is the death certificate of Krishnan, Exhibit A3 is the death certificate of his mother, Lakshmi, and Exhibit A4 is a certified copy of a marriage certificate between Karuvande Kunil Krishnan and Pokkande Valappil Shobha. According to the plaintiffs, this marriage certificate proves the marriage of deceased Krishnan with plaintiff No. 1. The certificate is dated 27.05.1982, recording the marriage as having taken place on 22.05.1982, under the Hindu Marriage Rules.

13. An important point to note is that, according to the birth certificate, plaintiff No. 2 was born on 16.09.1982, which is just four months after the alleged marriage. In such circumstances, plaintiff No. 2 must either have been born in the early second trimester or must have been conceived before the marriage. However, the plaint does not provide any explanation for this aspect. The case as pleaded is simply that plaintiff No. 2 is the daughter of the deceased Krishnan and plaintiff

No. 1. During cross-examination, PW1 stated that she was born after her parents' marriage and that her mother conceived her after they began residing together. She did not state that she was conceived prior to the marriage.

14. This inconsistency casts doubt on the plaintiffs' case regarding the paternity of plaintiff No. 2. The lack of any measures taken to establish paternity through scientific means, despite the defendants' assertion in the written statement, further supports the defendants' argument that plaintiff No. 2 is not the child of the deceased Krishnan.

15. To establish the case from the plaintiff's side, PW2 was examined. PW2 is the sister of plaintiff No. 1. She stated that the deceased Krishnan was learning carpentry from their father, residing at their home. During that time, Krishnan and plaintiff No. 1 fell in love, and plaintiff No. 1 became pregnant from that relationship. When both families became aware of this, they arranged for the marriage immediately thereafter. Hence, plaintiff No. 2 was conceived prior to the marriage. However, it is important to note that this was not pleaded in the suit. The pleadings and all evidence in a case must align; without such pleadings, evidence cannot be introduced into the court record using third-party testimony. Furthermore, the best person to speak on this matter is plaintiff No. 1 herself, but she chose not to appear in court without sufficient reason.

16. The counsel for the plaintiff referred to *Kattukandi Idathil Krishnan v. Kattukandi Idathil Valsan* 2022 INSC 643, wherein the Hon'ble Supreme Court of India held that where a man and woman are proven to have lived together as man and wife, the law will presume,

unless the contrary is clearly proved, that they were living together as a result of a valid marriage and not in a state of concubinage. However, in the present case, there is no primary or prima facie evidence or pleadings to establish this. Therefore, the law's conclusion is not applicable in this case due to factual differences.

17. The question to consider now is whether plaintiff No. 1 is the legally wedded wife of the deceased Krishnan. It is important to note that the plaint does not include any pleadings regarding the date of marriage, the place of marriage, or the residence of the parties after marriage. More importantly, there is no pleading or deposition concerning the observance of religious rites or ceremonies that are essential to establish a valid Hindu marriage. The marriage was denied in the written statement. Even there, after no steps were taken to include proper pleadings on this matter. Additionally, no evidence has been produced to demonstrate that such ceremonies were performed.

18. The plaintiffs rely upon Exhibit A4, the certified copy of a marriage certificate dated 27.05.1982, recording a marriage on 22.05.1982 under the Hindu Marriage Rules between Karuvante Kunnil Krishnan and Pokkante Valappil Shobha. However, in the absence of pleadings or evidence regarding the solemnization of the marriage in accordance with religious rites, the mere production of a marriage certificate cannot by itself establish the legality of the marriage. The evidentiary value of such a certificate depends upon proof that the marriage was in fact solemnised in accordance with law, which has not been demonstrated in this case. Moreover, the same is only a copy obtained from JFCM, Mattannur, not the original or a registration copy.

The reason the plaintiff was unable to produce the original Marriage certificate is not explained.

19. It is to be noted that in the written statement, the defendants have pleaded that the first plaintiff was the wife of one Krishnan from Palakkad, and that when he left, she began residing with Mr. Babu. They further stated that a maintenance case was filed before the Judicial First Class Magistrate, Mattannur, which was dismissed. When this question was put to PW1 and PW2, both stated that they were not aware of any such fact. PW1 specifically denied knowledge of such a case.

20. However, Exhibit A4, which the plaintiffs rely on as the main document to prove their marriage, is a certified copy of a marriage certificate between Krishnan and Shobha. It is noteworthy that this very document is a certified copy produced in MC No. 59/1997 before the Judicial First Class Magistrate, Mattannur. The record indicates that the certified copy was originally obtained from the Registrar by one S. Babu. This detail supports the defendants' claim that plaintiff No. 1 had previously resided with Babu and had litigated against him. The plaintiffs have not presented any evidence to disprove this point.

21. Thus, the evidentiary value of Exhibit A4 stands weakened, as its origin and production in the earlier maintenance proceedings probalilise the defendants' case rather than strengthen the plaintiffs' claim.

22. In civil proceedings, the burden lies upon the party asserting a fact to prove it. Here, the plaintiffs have not discharged their burden of proving that plaintiff No. 1 was married to deceased Krishnan. The lack

of pleadings, the absence of direct testimony, and the inconsistencies surrounding the documents produced all weigh against the plaintiffs.

23. In view of the lack of pleadings, the absence of testimony from plaintiff No. 1, and the failure to prove the essential ceremonies of marriage, this Court holds that the plaintiffs have not succeeded in establishing that plaintiff No. 1 is the legally wedded wife of deceased Krishnan. On the question of the partible right of the plaintiffs, it is clear that they have failed to establish the marital status of plaintiff No. 1 with deceased Krishnan and the paternity of plaintiff No. 2. In the absence of proof of a lawful relationship, the plaintiffs cannot be treated as heirs of Krishnan or Lakshmi. Consequently, they have no partible right in the plaint schedule property, and the claim for partition is unsustainable. The suit, therefore, is liable to be dismissed.

24. **Issue No.3:-** Considering the facts of this case, 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 26<sup>th</sup> day of March 2026).

Sd/-  
**MUNSIFF**

**Appendix:-**

**Plaintiff's Witnesses:-**

PW1 : Smt. K.K. Smitha.

PW2 : Smt. Vasanthi. P.V.

**Plaintiff's Exhibits:-**

|     |            |   |
|-----|------------|---|
| A1. | 04-07-2019 | Birth Certificate of Smitha, issued by the Iritty Municipality. |
|-----|------------|---|

|     |            |  |
|-----|------------|--|
| A2. | 24-04-2018 | Death Certificate of Krishnan. K.K, issued by the Mattannur Municipality.                      |
| A3. | 28-11-2015 | Death Certificate of Lakshmi, issued by the Mattannur Municipality.                            |
| A4. | 27-05-1982 | Certified copy of Marriage Certificate issued by the Keezhur Grama Panchayath.                 |
| A5. | 31-12-1975 | Certified copy of Application form filed before the Land Tribunal, Kuthuparamba in OA.376/1976 |
| A6. | 16-02-1977 | Certified Copy of Purchase certificate issued by the Land Tribunal, Kuthuparamba.              |
| A7. | 02-07-1976 | Certified copy of Order No. OA.376/1976 of Land Tribunal, Kuthuparamba.                        |

**Defendant's Witnesses:-**

DW1 : Smt. K.K. Chandrika.

**Defendant's Exhibits:-** Nil.**Court Exhibits:-** Nil.

Sd/-  
MUNSIFF

*kps.*

Fair/Copy of Judgment  
in OS No.256/2019.  
Dated : 26-03-2026.