

IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE, KOTTAYAM

Present: Sri. Manoj M., Principal District Judge

Friday, 22nd day of May , 2026
1st day of Jaishta, 1948

Appeal Suit No.30/2021 & Cross Appeal Filed by the Fourth Respondent

(O.S. No.161/2010 of the Munsiff Court, Vaikom)

Appeal Suit No.30/2021

Appellant/1st Defendant:-

K. Sadasivan Pillai, aged 74,
S/o. Devaki Amma and Kesava Pillai,
Malikkal house (now residing at "Leela Sadan"),
Kulasekharamangalam, Vaikom,
Kottayam District, Pin 686608

By Adv. B Premnath

Respondents/Plaintiff & Defendants 2, 3 & Addl.4th defendant :-

1. Manjusha, aged 43, W/o. Raju V.S., residing at Saraswathi Mandir, South Aduvasery P.O., Changamanadu (Via), Ernakulam District, Pin 683578
2. Somasekharan Pillai, aged 72, S/o. Devaki Amma and Kesava Pillai, P.B. No.76953, Sahama, Abudhabi, UAE. Now residing at " Sariga" Aroor, Cherthala, Alappuzha District, Pin 688534
3. Malini, aged 69, D/o. Devaki Amma and Kesava Pillai, Maliakkal house, Kulasekharamangalam, Vaikom, Kottayam District, Pin 686608
4. Sunilakumari, aged 41, W/o. Dinesh Gopal, Pulimparambil house, Charamangalam Kara, Kanjikuzhi Village, Alappuzha District, Pin 688539 (from Maliakkal house, Kulasekharamangalam Village, Kulasekharamangalam Kara, Vaikom, Kottayam District.

R1 - By Adv. M.G. Jeevan

R2 - By Adv. Jojo Thomas & Adv. Sachin Sebastian

R3 - By Adv. Feba Elma Varghese

R4 - By Adv. G. Jayasankar

Appeal Memorandum filed under section 96 r/w Oder 41 Rule 1 of the Code of Civil Procedure.

Cross Appeal filed by the 4th respondent

Appellant/4th respondent:-

Sunilakumari, aged 42, W/o. Dinesh Gopal,
Pulimparambil house, Charamangalam Kara,
Kanjikuzhi Village, Alappuzha District,
(from Maliakkal house, Kulasekharamangalam Village,
Kulasekharamangalam Kara, Vaikom,
Kottayam District.

By Adv. G. Jayasankar

Respondents:-

1. K. Sadasivan Pillai, aged 74, S/o. Devakiamma and Kesava Pillai, Maliakkal house (now residing at Leela Sadan), Kulasekharamangalam, Vaikom, Kottayam District.
2. Manjusha, aged 43, W/o. Raju V.S., residing at Saraswathi Mandir, South Aduvasery P.O., Changamanadu (Via), Ernakulam District.
3. Somasekharan Pillai, aged 72, S/o. Devakiamma and Kesava Pillai, P.B. No. 76953, Sahama, Abudhabi, UAE. Now residing at Sariga Aroor, Cherthala, Alappuzha District.
4. Malini, aged 69, D/o. Devakiamma and Kesavan Pillai, Maliakkal House, Kulasekharamangalam, Vaikom, Kottayam District.

R1 - By Adv. B Premnath

R2 - By Adv. M.G. Jeevan

R3 - By Adv. Jojo Thomas & Adv. Sachin Sebastian

R4 - By Adv. Feba Elma Varghese

Appeal Memorandum filed under section 96 r/w Oder 41 Rule 22 of the Code of Civil Procedure.

These Appeal Suit and Cross Appeal filed by the 4th respondent having been finally heard on 06.04.2026 and the Court on 22.05.2026 delivered the following:

JUDGMENT

This appeal is preferred by the appellant, who was the first defendant in O.S. No.161/2010 on the file of the Munsiff's Court, Vaikom against the judgment and decree dated 16.02.2021, whereby the suit for partition was partly decreed and a preliminary decree was passed.

2. The parties are referred as per their status in the trial court.

3. The case of the plaintiff before the trial court in a nutshell is as follows :- The plaintiff is the daughter of defendant No.3 and she was born on 17.02.1976. The defendants are the children of one Devakiamma, who died on 01.06.2004. Devakiamma and her two brothers Krishna Pillai and Narayana Pillai along with their mother Kuttiamma formed an undivided Hindu Marumakkathayam Tharavadu, which was governed by the provisions of the Travancore Nair Act. (Regulation II of

1100). The Tharavadu was known as Thevalakkattu. In the year 1124 M.E the Thevalakkattu Tharavadu was partitioned by a registered document, whereby the Tarwad was divided into three thavazhies. The plaint schedule properties were allotted to the 1st thavazhi of Krishna Pillai, to the 2nd thavazhi of Narayana Pillai and to the 3rd thavazhi of Kuttiamma and her daughter Devakiamma and the children born to her at that time. At time of partition, Devakiamma had only two children, defendant Nos.1 and 2. Defendant No.3, Malini, the mother of the plaintiff was born after the above partition deed. The plaintiff's maternal grandfather (father of 3rd defendant) acquired the property from the 1st thavazhi of Krishna Pillai as per an exchange deed and said acquisition was made in the name of Devakiamma, the grandmother of the plaintiff and mother of defendant Nos.1 and 2. Plaintiff contended that the said property remained as thavazhi property in the hands of Devakiamma. When Narayana Pillai, the allottee of the property of 2nd thavazhi died, unmarried and intestate in the year 1980, Devakiamma and her children including the 3rd defendant, his legal heirs obtained right over the said property. The plaintiff contended that all the plaint schedule properties are thus thavazhi properties of Devakiamma

and her children and the children born in the female line. The plaintiff acquired by birth a share in the plaint schedule properties. Devakiamma died on 01.06.2004 and her $\frac{1}{5}$ th share in the property, which had crystallized in her, by operation of Joint Hindu Family System (Abolition) Act 1976 devolved upon the parties to the suit by virtue of Sec.17 of the Hindu Succession Act. The plaintiff submits that she has $\frac{1}{4}$ th share in the suit properties. Now the plaint schedule properties are in the possession and enjoyment of defendant Nos.1 to 3. Though the plaintiff demanded a partition and allotment of her share, inspite of the receipt of the notice by the defendants, they didn't accede the demand. Hence the suit.

4. The first defendant filed written statement contending as follows : The suit is collusively filed by the plaintiff along with her mother, the 3rd defendant. Document No.850/1124 (M.E) is admitted. As per that deed, the properties were allotted to the members of the Thevalakkattu family into shares and separate shares were allotted to Kuttiamma, the great grandmother of the plaintiff, Devakiamma, the defendants' mother and to the 1st and 2nd defendants, who were minors. So this was an "exvitermine" of the Thevalakkattu tarawad and the property does not have the

character of thavazhi property. Therefore, the plaintiff is not entitled to any share in the properties covered by the partition deed No.850/1124 (M.E). Plaint C schedule property was acquired by late Kesava Pillai as per sale deed No.851/1124 M.E of Vaikom SRO in the name of Devakiamma, Sadasivan Pillai and Somasekharan Pillai. The plaintiff has no birth right over this property, and that cannot be considered as a thavazhi property. First defendant admitted that Mr.Narayana Pillai was a bachelor and died intestate. But half right in his properties was set apart for his brother Krishna Pillai and the other half was set apart for his sister Devakiamma (20 cents of land in Survey Nos.12/9/17 and 12/10/19) and that half right is divided to her children Sadasivan Pillai (D1), Somasekharan Pillai (D2) and Malini (D3). But Malini transferred the Thandaper number in her name on 20.08.1993, without the knowledge and consent of other heirs (heirs of Krishna Pillai and Devakiamma) after a lapse of 12 years and it was a fraud played by the collusion and connivance of the plaintiff.

5. First defendant contended that Deed No.850/1124 (M.E) is a final settlement deed 'exvitermine' as male members are concerned and the plaintiff is not entitled to any share in respect

of these properties. There is no such extent of 60 cents of land as stated in the plaint B schedule. 40 cents (Thuruthummel) nilam was owned by Late Narayana Pillai and 20 cents of land was owned by Kuttiamma, Devakiamma and minor children Sadasivan Pillai, Somasekharan Pillai as per deed No. 850/1124 M.E. 40 cents of nilam comprised in plaint B schedule is to be divided among the heirs of Krishna Pillai and Devakiamma. Now this entire plaint B schedule property having an extent of 60 cents is possessed and enjoyed by the 3rd defendant. Mutation was effected in her name on 20.08.1993 by fraudulent means in collusion with the plaintiff. Plaint D to I schedule properties were acquired by Late Kesava Pillai and set apart to his children D1 to D3 as per will deed No.8/1952. The plaintiff has no right in the above properties also. Plaint J schedule property was acquired by Late Devakiamma as per Gift Deed No.3397/1123 M.E. Only her children are entitled to this property, i.e. defendant Nos.1 to 3. First defendant contended that all the properties are in the hands of 3rd defendant because all the other defendants were away from the locality. After the arrival of the 1st defendant, a partition deed No.2061/2007 of Vaikom SRO was registered concerning the scheduled properties, giving

3rd defendant Malini more than that she and her daughter plaintiff ought to have entitled, even before the plaintiff asked share. Being a party in the above deed of partition, Malini is estopped from pleading otherwise. First defendant further contended that after receiving the notice from the plaintiff's counsel, the matter was discussed and a settlement was arrived at, signed by all the parties including the plaintiff's counsel. As per the above settlement dated 23.12.2008, 3.65 cents of land was set apart to the plaintiff. First defendant contended that the said document was a sham document and was not acted upon and has no value and it will not convey any right to the plaintiff over the said 3.65 cents of land. The 3rd defendant was in possession and enjoyment of the usufructs of all the schedule properties except A schedule property set apart in the partition deed No.2061/2007 of Vaikom SRO. The scheduled properties as per the above partition deed are mutated to the names of the respective parties. Now the properties are possessed by metes and bounds as per the partition deed No.2061/2007.

6. After the above partition deed, the defendant developed 30 cents of land and constructed a two storied building with all facilities with the consent of all the parties and the permission of

the Maravanthuruthu Grama Panchayat. The plaint A, B, C schedule properties were allotted by the partition deed No.850/1124 M.E to Kuttiamma, the grandmother of defendants 1 to 3, Devakiamma, the mother of defendants 1 to 3 and defendants No.1 and 2, who were minors at that time. Plaint A and C schedule properties were partitioned between the defendants 1 to 3 as per partition deed No.4016/2007 and 3rd defendant was allotted 35.750 cents of property, even though she is not entitled to any share as per partition deed No.850/1124 M.E. Plaint D and F schedule properties, which were included in the registered Will No.8/1952 of the father of the defendants 1 to 3 were also partitioned between the defendants 1 to 3.

7. Plaint F schedule property extending to 22 cents was allotted to the 1st defendant. Out of the plaint D schedule property extending to 40 cents, 20 cents each was allotted to 2nd and 3rd defendants. Plaint E, G, H, I schedule properties included in the registered will No.8/1952 to which only defendants 1 to 3 are entitled to. Plaint J schedule property acquired by Devakiamma as per registered Gift Deed No.3397/1123 M.E are in the joint possession of defendants 1 to 3 and it has to be

divided between them equally and defendant 1 to 3 are entitled to $\frac{1}{3}$ rd share each. Since Narayana Pillai died as bachelor in the year 1980, the 40 cents of property included in the plaint B schedule was devolved equally (20 Cents each) on Devakiamma the mother of defendants 1 to 3 and Krishna Pillai the brother of Devakiamma. Devakiamma died in the year 2004, therefore said 20 cents of property devolved equally on defendants 1 to 3 and they are entitled to $\frac{1}{3}$ rd share each in the said property. The balance 20 cents of property out of the plaint B schedule was allotted to Kuttiamma, Devakiamma and defendants 1 and 2. Kuttiamma died in the year 1965, therefore $\frac{1}{4}$ th share of Kuttiamma was devolved equally on Devakiamma and defendants 1 to 3. As Devakiamma died in the year 2004, her share has also been devolved on defendants 1 to 3, who are in joint possession of the said properties. Defendants 1 to 3 are entitled to get their shares in the above properties and pray for partition. First defendant further contended that plaintiff has no cause of action as stated in the plaint and the suit is filed as an afterthought and in collusion with her mother, the 3rd defendant.

8. Second defendant filed memo adopting the contentions in the written statement of the 1st defendant.

9. Third defendant filed written statement contending that the plaint schedule properties are her family property, and therefore, the plaintiff and defendants are jointly entitled for the same. It is to be partitioned by metes and bounds. She claimed that she is entitled to $\frac{1}{4}$ th share over the plaint schedule properties. According to her, she and her family have been residing in the house situated in the plaint A schedule property, which was constructed by her using her own funds. Therefore, the said house is to be set apart to the share of the 3rd defendant.

10. The Additional 4th defendant filed written statement contending that she is the daughter of Omana, who was the only child of Krishna Pillai. Krishna Pillai was the holder of A schedule property in the partition deed No.850/1124 M.E. She contended that the right of late Krishna Pillai was devolved to her mother Omana and then to her, as his legal heir. She also contended that on the death of Kuttiamma, the mother of Krishna Pillai, the $\frac{1}{4}$ th right of Kuttiamma in the C schedule of the partition deed was devolved to her children Krishna Pillai,

Narayana Pillai and Devakiamma. Out of this, the right of Krishna Pillai (ie. $\frac{1}{3}^{\text{rd}}$ of $\frac{1}{4}^{\text{th}}$) in the above property was also devolved to the 4th defendant. Since Narayana Pillai, died as bachelor and intestate, his 40 cents of property obtained as per the above partition deed was devolved to his brother Krishna Pillai and sister Devakiamma in equal shares. Therefore, that $\frac{1}{2}$ right in the property of Narayana Pillai was devolved to the 4th defendant. The above properties are included in the A and B schedule of the plaint and a preliminary decree may be passed allotting her share. By virtue of partition deed No.850/1124, an exvitermine partition was conducted. **Therefore, the plaintiff is not entitled to get the share as claimed in the plaint.**

11. After hearing both sides, the trial court framed the following issues :-

- 1) *Whether the plaint schedule properties are partible ?*
- 2) *If so, what is the share of the plaintiff?*
- 3) *What is the order, as to reliefs and costs?*

12. Originally this case was disposed of by the Munsiff's Court on 23.11.2011. Against that judgment, 1st defendant had filed appeal as A.S. No.7/2014 before the Principal Sub Court, Kottayam and as per the order in the above appeal dated

31.01.2018, the decree and judgment dated 23.11.2011 was set aside and the suit was remanded back to the Munsiff's Court.

13. Against that order, the plaintiff approached the Hon'ble High Court and the Hon'ble High Court as per order in FAO (RO.) No.97/2018) dated 06.08.2019 directed the Munsiff's Court to consider the entire matter denovo, untrammelled by any of the findings or observations in the impugned judgments. Hon'ble High Court further directed that it will be open for both sides to adduce further evidence, if sought for and passed the following order :

“It is only appropriate that the trial court considers the entire matter denovo, untrammelled by any of the findings or observations in the impugned judgments. It will be open for both sides to adduce further evidence, if sought for. Needless to say that the documents produced along with I.A. No.465/2017 before the appellate court shall be forwarded to the Munsiff Court for further proceedings.

Considering the fact that the suit is of the year 2010, I am sure that every endeavour would be made by the trial court to have the proceedings expedited”.

14. Subsequent to the remand, the pleadings in the written statement of the 1st defendant was amended and some

admissions were deleted, as per the order in I.A No.1495/2018 dated 08.10.2018 and I.A No.1869/2019 dated 06.01.2020.

15. The trial court examined PW1 and PW2 and marked Exts.A1 to A11 on the side of the plaintiff. On the side of the defendants, DW1 to DW3 were examined and Exts.B1 to B20 were marked. (Originally, PW1, the plaintiff was examined and Exts.A1 to A5 were marked and PW1 to PW3 were examined and Exts.B1 to B4 were marked. After remand, PW1 was examined further and Exts.A6 to A11 were marked and PW2 was also examined ; DW1 was examined further and Exts.B5 to B20 were marked further).

16. After hearing both sides and analysing the evidence on record, the trial court held that the parties are governed by the Travancore Nair Act (Regulation of II of 1100) and though at the time of arguments, the counsel for the plaintiff contended that the parties belonged to Hindu Pattaryar Community and not governed by the Nair Act, it was found that the said argument could not be accepted ; that the recitals in Ext.A1 shows that property was divided into six individual shares and allotted to each party towards their respective shares with absolute right of

ownership and possession and right to effect mutation in their name ; that in view of the decision reported in **Mary v. Bhasura Devi** [1967 KLT 430 (FB)] and **Remadevi and Others v. A.S.R. Gopalakrishnan and Others** [2008 (2) KLT 757] since as per Ext.A1 partition deed, the C schedule property was allotted to a multi member unit consisting of Kuttiamma, her daughter Devakiamma and her minor children defendants 1 and 2, which constitute a natural thavazhi, the new members admitted to the unit, viz. the third defendant and her daughter, the plaintiff gets right by birth in the plaint A schedule property and 20 cents out of the 60 cents mentioned in the plaint B schedule property ; that Kuttiamma died in the year 1965 and her right passes to the remaining members of the thavazhi and the fourth defendant / cross appellant is not entitled to inherit the property of Kuttiamma since she is not a member of the thavazhi ; that on the death of Devakiamma, her children defendants 1 to 3 only would inherit 1/3rd of 1/5th of her share over the property ; that remaining 60 cents of plaint B schedule property allotted to the share of Narayana Pillai as per Ext.A1, would devolve equally on Krishna Pillai and Devakiamma, since he was a bachelor and died intestate on 1980 ; that fourth defendant, who is the only

lineal descendant of Krishna Pillai would inherit the $\frac{1}{2}$ share of the property of the brother of late Narayana Pillai ; that on the death of Devakiamma in the year 2004, the remaining $\frac{1}{2}$ share inherited by her from Narayana Pillai would devolve to her children defendants 1 to 3 only and that the plaintiff is not entitled to get any share over 40 cents of property in plaint B schedule ; that plaint C schedule property covered by Ext.A2 is the self acquired property of Devakiamma and on her death, the defendants 1 to 3 are entitled to get $\frac{1}{3}$ rd share each over plaint C schedule property ; that the plaintiff or the fourth defendant is not entitled for any share over the same ; that plaint D to I scheduled properties are covered by Ext.B8 Will of the husband of Devakiamma, whereby he bequeathed properties to defendants 1 to 3 and it is not thavazhi property and the plaintiff is not entitled for any share over the same ; that plaint J schedule obtained by Devakiamma by virtue of Ext.A9 Settlement deed executed by Kuttiamma is not thavazhi property and it devolved only on her children defendants 1 to 3 and the plaintiff is not entitled to get any share over it ; that the plaintiff was born on 1976 and she would get by her birth, $\frac{1}{5}$ th right over the thavazhi property scheduled as plaint A schedule

and 20 cents of property in plaint B schedule and that the plaintiff is not entitled for any right over the remaining property plaint C to J schedule properties ; that the fourth defendant is entitled to get only $\frac{1}{2}$ share over the 40 cents of property described in plaint B schedule and passed a Preliminary decree as follows :

1. *Plaint A schedule properties and 20 cents of property in plaint B schedule is found partible among plaintiff and D1 to D3. Out of this, the plaintiff is entitled to $\frac{3}{15}$ share and defendants 1 to 3 are entitled to $\frac{4}{15}$ share each.*
2. *40 cents of property covered by plaint B schedule is found partible among the defendants 1 to 4 and the D4 is entitled to $\frac{3}{6}$ share and D1 to D3 are entitled to $\frac{1}{6}$ share each.*
3. *Plaint G to J schedule properties are found partible among defendants 1 to 3 and each of them are entitled to $\frac{1}{3}$ share.*
4. *Share of the 1st and 2nd defendant shall be allotted to them on payment of requisite court fee.*
5. *Any party can file application for passing final decree.*
6. *Equities and reservations are relegated to the stage of final decree.*

7. *Costs of the suit shall come out of the estate.*
8. *Suit is adjourned sine-die.*

17. Against the said judgment and decree, the first defendant has filed this appeal urging the following main grounds (all of the grounds are not stated and only the main grounds of challenge are stated). The impugned judgment and decree suffers illegality and it is passed without properly appreciating the issues involved and the evidence on record and it is liable to be set aside ; that the finding of the trial court that though the tharavadu was partitioned, C schedule property (plaint A schedule and 20 cents of plaint B schedule) was allotted to the multi-member unit consisting of Kuttiamma, her daughter Devakiamma and her minor children defendants 1 and 2, constituting a natural *thavazhi*, is erroneous ; that the trial court ought to have found that, under Ext.A1 partition deed, the allotment of shares was made per capita, and that the properties were divided into 6 individual shares, each allotted to the respective parties towards their individual shares with the absolute right of ownership and possession, including the right to effect mutation in his or her name ; that the trial court ought to have found that once shares are defined as per Ext.A1, there

is severance of joint status and even if the four shares of Kuttiamma, Devakiamma and the defendants 1 and 2 are kept common in C schedule in Ext.A1, it will not confer the status of joint property on it ; that the trial court ought to have found that the shares were not allotted in Ext.A1 to Kuttiamma, Devakiamma and defendants 1 and 2, considering it as a multi-member unit ; that the trial court wrongly appreciated the ratio in the decision in **Mary v. Basura Devi** ; that the trial court failed to take note of the definition of Tharavadu in Sec.2(6) of the Travancore Nair Act and Sec.4(1) of the Joint Hindu Family (Abolition) Act ; that the trial court ought to have found that the first respondent failed to prove her date of birth, yet, in the absence of any reliable evidence, erroneously declared her date of birth as 17.02.1976 ; that the trial court ought to have found that after Ext.A1 partition deed, Ext.B13 partition deed was entered into, further partitioning the said properties and that the trial court ought to have held that the third respondent, who was not born at the time of Ext.A1, does not have any right over plaint A to C schedule properties, which had already been divided into per capita shares as per Ext.A1 and her right arise only after the death of her mother Devakiamma in 2004. Hence

it is prayed that the judgment and decree passed by the trial court may be set aside.

Cross appeal

18. The additional fourth defendant / fourth appellant filed cross appeal challenging the judgment and preliminary decree of the trial court on the following grounds : The trial court has not allotted the share, which was entitled to the fourth defendant over the items of properties, which were partible. The fourth defendant is a member of the Tarwad of Krishna Pillai, a member of Maliakkal Tarwad, who is the brother of Narayana Pillai and son of Kuttiamma, as both of them died intestate. The fourth defendant is entitled to 20 cents out of the property owned by Narayana Pillai, who died issueless and intestate, which devolved on his brother Krishna Pillai. Krishna Pillai was entitled to 1/4th of the 1/3rd right over the share of Kuttiamma, who died intestate. The trial court has not allotted the share entitled to the cross appellant / fourth defendant. The trial court ought to have found that the Thevalakkattu Tharavadu was partitioned as per document No.3306/1111 M.E. of Vaikom SRO and as per Ext.A1 partition deed, in which shares were allotted per capita, the Maliakkal Tarwad was also

partitioned and no tarwad or thavazhi was in existence. The trial court has not considered the impact of the verdicts of the Sub Court in A.S. No.7/2014 and Hon'ble High Court in FAO (RO) No.97/2018. As per the genealogical table, it is evident that the fourth defendant / cross appellant has entitlement to proportionate share over the scheduled properties. It was contended that the plaintiff / first respondent is the daughter of third defendant and she is not entitled to any share in the properties, since Ext.A1 partition deed is exvitermine partition. Thus a preliminary decree is to be passed allotting the share, which devolved on Krishna Pillai, after the demise of Kuttiamma and Narayana Pillai to the fourth defendant and the judgment and preliminary decree of the trial court may be reversed and a modified preliminary decree may be passed.

19. Heard both sides and considered the trial court records.

20. The only point which arises for consideration is

Whether the impugned judgment and preliminary decree dated 16.02.2021 in O.S. No.161/2010 of the Munsiff's Court, Vaikom is legally sustainable ?

21. The Point :- The learned counsel for the appellant / first defendant contended that as per second and third lines in

Ext.A1, it is specifically stated that from the Thevalakkattu Family, the family members were then residing at Maleakkal. That means that even before the execution of Ext.A1, the Thevalakkattu Tharavadu was partitioned and separated. In Ext.A8 also, after effecting partition, no property is seen allotted jointly to the thavazhi. According to the learned counsel, by virtue of Ext.A1, per capita partition was done and property was not allowed jointly to a thavazhi. Moreover, as per Ext.B13, partition deed of the year 2007, 44.5 cents comprising in plaint A, B and C schedules were partitioned and appellant was allotted property. The second respondent was allotted $28\frac{3}{4}$ cents. The father of the party had executed Will. The learned counsel relied on Exts.B10, B11 and B12 and pointed out paragraph No.12 of the judgment of the learned Munsiff, wherein the properties stated to be mentioned as six schedules of individual shares. Therefore, since individual shares were allotted, there was no thavazhi in existence.

22. According to the learned counsel for the appellant, the contention of the plaintiff is that a thavazhi existed till Joint Hindu Family System (Abolition) Act was passed and because the plaintiff was born before the Joint Hindu Family System

(Abolition) Act was enacted, she is entitled to a share in the property jointly allotted to the group consisting Kuttiamma, her daughter Devakiamma and defendants 1 to 3. The appellant contends that the plaintiff's mother did not take a claim, but her daughter had made a claim. It was contended that the said claim of being a member of thavazhi and claiming partition of the thavazhi property is not at all tenable or legal, as Ext.A1 is an exvitermine partition and the joint family or thavazhi status was disrupted, after the said partition and the respective sharers were tenants in common.

23. According to the learned counsel for the appellant, a per capita division was effected as per the partition deeds of the Thevalakkattu family and after that the parties are tenants in common and the Tharavadu came to an end, the contention of the plaintiff that after partition of the property, the property was allotted to a natural group, which was a multi member unit and hence the character of the property was retained as thavazhi property is not at all tenable. The learned counsel for the appellant relied on a plethora of decisions, which are as follows :

(1) **Sinnammu Amma vs. Narayanikutty Amma** (1967 KLT 521), (2) **Mary vs. Bhasura Devi** [1967 KLT 430 (F.B.)], (3)

Hardeo Rai vs. Sakuntala Devi and Others [2008 (7) SCC 46], (4) **Krishnan Nair Velayudhan Nair vs. Karthiyani Janaki** (1957 KLT 222), (5) **Ramadevi vs. Gopalakrishnan** [2008 (2) KLT 757], (6) **Neelakanta Pillai vs. Madhavi Amma** (1958 KLT 890), (7) **Ramachandran vs. Vijayan** [2024 KLT OnLine 2787 (SC)], (8) **Madhukumar and Others vs. Gopala Menon and Others** (2009 KHC 940), (9) **Banarsi and Others vs. Ram Phal** [2003 (9) SCC 606] and (10) **Hope Plantations Ltd vs. Taluk Land Board, Peermade and Another** [1999 (5) SCC 590].

24. It was contended that Exts.A1 and A8 are admitted. As per Ext.A1, an outright partition of properties between Krishna Pillai, Narayana Pillai, Kuttiamma, Devakiamma, Sadasivan Pillai and Somasekharan Pillai was effected, properties were divided into six individual shares on per capita basis and allotted to the said individuals. It is a division per capita. The said partition deed brings an end to the joint holding of the properties to the parties under Ext.A1 and hence the joint family status is disrupted. Moreover, nowhere in Ext.A1, it is mentioned that the properties are being allotted to different thavazhees. Ext.A1 partition deed refers to Ext.A8 partition deed of the year 1936, between the members of Parvathi Amma, the mother of

Kuttiamma and the grandmother of Devakiamma. Ext.A8 evidences that much before 1936, a partition took place in Thevalakkattu Tharavadu and properties were divided into twelve shares and were allotted to five schedules to the members therein. As per the recitals in Ext.A8, the parties were to enjoy their respective shares separately and exclusively. The appellant, the second and third respondents were not born at that time. As per Ext.A8, four separate individual shares were allotted to Kuttiamma, Krishna Pillai, Devakiamma and Narayana Pillai, as per D schedule of that partition deed. The said property was partitioned as per Ext.A1 on per capita basis and six individual shares were allotted to Krishna Pillai, Narayana Pillai, Kuttiamma, Devakiamma, Sadasivan Pillai and Somasekharan Pillai. The above said scheduling of properties into three schedules is only for the sake of convenience and it does not give any indication that those are thavazhi properties.

25. It was contended that as per Sec.2(1) of the Joint Hindu Family System (Abolition) Act, which came into force on 01.12.1976, joint family means any Hindu family with community of property and includes a Tharavadu or Thavazhi governed by the Travancore Nair Act. As per Sec.2(6) of the Travancore Nair

Act, Tarwad is defined as including all members of a Marumakkathayam family with community of property. There was no community of property between Kuttiamma, Krishna Pillai, Narayana Pillai, Devakiamma and defendant Nos.1 and 2, after execution of Ext.A1 Partition Deed. Therefore, the notion of partition envisaged under Sec.4 of the Joint Hindu Family System (Abolition) Act, would not take effect. Since, per capita shares were allotted to the members as per Ext.A1, the property would not come within the purview of the Joint Hindu Family System (Abolition) Act. Therefore, the first respondent / plaintiff would have got a birth right in the share allotted as per Ext.A1, only if she was born into an undivided Hindu joint family. Since the family was not undivided, she did not get a birth right. The learned counsel for the appellant relied on the decision reported in **Chinnammu Amma v. Narayanikutty Amma**, (1967 KLT 521), and contended that once the shares are defined there is severance of the joint status. Ext.B13 partition deed dated 27.12.2007 was entered into between appellant, R2 and R3, the mother of the plaintiff, after the death of Devakiamma on 01.06.2004. The property covered by Ext.A1, except the extent allotted to Narayana Pillai, were partitioned between them, i.e.,

is 129 cents. After Ext.B13 partition deed, the appellant constructed a house therein, the property allotted to him and he is residing in it with his family. The Hindu Succession Act has overriding effect of any Law or custom or usage of Hindu Law in force immediately before the commencement of the Act. As it is clear from the recitals in Ext.A1 that plaint schedules D to J properties are not thavazhi properties and were not part of a tarwad / undivided joint Hindu family, as on the date of that Act. The devolution of properties can take place only in accordance with the provisions of the Hindu Succession Act. The parties to Ext.A1, except appellant and the second respondent, passed away, after the commencement of the Hindu Succession Act. Bhavani Amma, wife of Krishna Pillai and Omana, the daughter of Krishna Pillai, are no more. The ratio of the decision reported in **Mary v. Bhasura Devi** [1967 KLT 430] will not apply to the present case. The trial Court erroneously assumed that a single share is allotted to Kuttiamma and others by way of C schedule properties, whereas four individual shares were grouped together in the C schedule of Ext.A1. The trial Court had erroneously held that Kuttiamma, her daughter Devakiamma, and minor children, appellant and second respondent, as a

natural thavazhi were allotted the properties and that the property was allotted to a multi member unit. The said finding is wrong as four individual shares on per capita basis were allotted to four individuals, which is their absolute property and not thavazhi property. The finding in paragraph No.26 that the nature and character of the property remains as thavazhi property till the enactment of the Joint Hindu Family System (Abolition) Act is patently wrong. The suit was decreed, finding that only plaint A schedule and 20 cents of B schedule were partible and shares were allotted to the plaintiff and fourth defendant. It was found that the plaintiff was not entitled to any share in plaint D to J, when the matter was taken up in appeal, the appellate Court found that the trial Court had not properly considered the prime question, whether Ext.A1 partition deed is exvitermine partition deed and whether the allotment of plaint A, B and C schedule properties are per capita and not to thavazhi and remanded the matter back to enable parties to adduce further evidence. The plaintiff assailed the remand order before the Hon'ble High Court of Kerala vide Order in FAO (RO) No.97/2018, wherein it was found that the remand order could not be faulted. It was an open remand and after the remand by

the Appellate Court, the trial Court has to consider whether A, B and C schedule properties are partible or not. Regarding the properties scheduled as D to J in the plaint, the finding of the trial Court that those are not partible was virtually upheld by the Hon'ble High Court. The plaintiff has not filed any appeal aggrieved by the findings that D to J schedule properties are not partible. It was also contended that the facts of the case in the judgment reported in 1967 KLT 430 are different from the facts of the present suit. The ratio of the decision of the Hon'ble Supreme Court in **Ramachandran v. Vijay** reported in (2024 KLT OnLine 2787) is not applicable to the facts of this case. In the present case, a single share was not allotted to a group / thavazhi. As per Ext.A1, six single shares were allotted to six individuals to be enjoyed separately. Merely because four shares were allotted to four individuals which are kept in C schedule of Ext.A1, it does not mean that shares were allotted to a group. In 1967 KLT 430, at paragraph No.3, the ratio that the sharers take as tenants in common, without division by metes and bounds, is not contextually applicable to Ext.A1 partition deed. The decision of the Hon'ble High Court reported in **Madhukumar and Others v. Gopala Menon and Others** [2009 KHC 940] also is

not applicable to the facts of the present case. As in that case, a share of property was allotted to a group containing one Parukutti Amma and their four children and grandchildren so as to constitute a thavazhi. It was also contended that the first respondent / plaintiff has not filed a separate appeal or cross-objection against that part of the decree of the trial court, which disallowed share from plaint C schedule and from plaint D to H schedule properties. Therefore, the plaintiff cannot challenge the finding of the trial court against her. The learned counsel for the appellant relied on the decision reported in **Banarsi and Others vs. Ram Phal** [(2003) 9 SCC 606], in support of his contention. The contention of the first respondent that acquisition by a natural group, which is a thavazhi will, enure the whole members of thavazhi including those who are subsequently born in a thavazhi will not apply to the facts of this case. As per the decisions of the Hon'ble High Court reported in **Krishnan Nair Velayudhan Nair vs. Karthiyani Janaki** (1957 KLT 222) and **Neelakanta Pillai vs. Madhavi Amma** (1958 KLT 890), once a Marumakkathayam Tarwad becomes divided, the divided status applied to properties left out in partition and the members therein are in the position of tenants in common. After division,

there will be no tarwad. As per Ext.A1 C schedule of the said deed was not allotted to the multi member unit, it contains per capita shares to four individuals with absolute rights over their shares. No natural group is created by Ext.A1.

26. The decision cited by the learned counsel for the first respondent / plaintiff challenging the removal of some admissions by the first defendant in the written statement by filing an amendment petition are not applicable to this case. The first respondent cannot seek to reopen the order of the trial Court allowing the amendment of the written statement in this appeal filed by the first defendant, as it is barred by the principles of res judicata.

27. The learned counsel for the plaintiff / first respondent contended that the plaintiff was born on 17.02.1976, as evidenced by Ext.A11 birth certificate. Therefore, the plaintiff and defendant Nos.1 to 3 are members of Kuttiamma's thavazhi as on 01.12.1976, when the Kerala Joint Hindu Family System (Abolition) Act came into force. The plaint schedule properties may be divided into five shares and plaintiff may be allotted 1/5 shares over the same. It was contended that in the year 1936, corresponding to 1111 M.E, partition took place in Thevalakkattu

Tharavadu, evidenced by Ext.A8. As per Ext.A8, the thavazhi of Kuttiamma comprised of four persons namely Kuttiamma, Kuttiamma's children, Krishna Pillai (major) and minor children Devakiamma and Narayana Pillai. Four shares were allotted to them. The said thavazhi was again partitioned in the year 1948 evidenced by Ext.A1. At that time, there were six members by the birth of defendants 1 and 2, the children of Devakiamma. At the time of execution of Ext.A8 partition deed, Kuttiamma and her daughter Devakiamma got 2/4 shares. But under Ext.A1, they got 4/6 shares along with Devakiamma's children. In Ext.A8 also, it is stipulated that the property is to be mutated in their name. What Kuttiamma's thavazhi got as per Ext.A8, they partitioned as per Ext.A1. In **Ramachandran vs. Vijayan** (2024 KLT OnLine 2787), it was exhaustively held regarding partition and Tharavadu and thavazhi properties. The counsel referred to paragraph Nos.42, 44, 47, 49 of the said decision to buttress his argument.

28. The learned counsel for the first respondent contended that DW1 admitted in his cross-examination originally in the trial Court that the plaintiff had right over the plaint schedule

property. The first defendant amended the written statement after remand and deleted the original admission to the effect that the thavazhi was limited to the share of late Kuttiamma and Devakiamma and added that the property does not have the character of thavazhi at all. The admissions in paragraph No.4 and paragraph No.6 that the plaintiff was entitled to get 1/7th share of Kuttiamma and 1/4th share of Devakiamma in C schedule was deleted and it was added that the plaintiff is not entitled to any share in the plaint schedule properties. The admissions made in the written statement cannot be withdrawn by an amendment. In view of the decision of the Hon'ble Supreme Court reported in **Ram Niranjana Kajaria vs Sheo Prakash Kajaria & Ors** [(2015) 10 SCC 203], wherein the Hon'ble Supreme Court overruled the decision reported in **Panchdeo Narain Srivastava v. Km. Jyoti Sahay** [1984 Suppl. SCC 594]. It was thus contended that the judgment and decree of the trial Court does not warrant any interference and the appeal may be dismissed. The learned counsel for the respondent relied on the following decisions : (1) **Mary vs. Bhasura Devi** [1967 KLT 430 (F.B.)], (2) **Prasanth vs. Kalliani** [2007 (2) KLT 992], (3) **Yesodha vs. Sankunni** (1984 KHC 142), (4) **Avvammada**

Pathummabi and Others vs. Avvammada Sarommabi and Others (1992 KHC 534), (5) **Akavande Mulahur Vatakethil Kizhakke Nayar Veetil Karna Vastri Sreedevi Nethiar and Others vs. Akavande Mulahur Elayat Vatakke Nair Veetil Karnavan Peruvunni Nair and Others** (MANU/TN/0322/1934), (6) **Kunhipappada Beefathummabi vs. Kunhipappada Kunhikoya** [2006 (2) KLT 560 (F.B.)], (7) **Nullikkodan vs. Ayisumma** (2002 KHC 893), (8) **Changarothe Lakshmi Amma and Others vs. C.Mohan Kumar and Others** (2017 KHC 789), (9) **Leela Amma and Others vs. Aravindaksha Menon and Others** [2012 (2) KHC 169], (10) **Sarojini Amma vs. Abubacker** (1986 KLT 944), (11) **Kamalam vs. Devaki** [2006 (2) KLT 499], (12) **Sinnammu Amma v. Narayanikutty Amma** [1967 KLT 521], (13) **Ramadevi vs. Gopalakrishnan** [2008 (2) KLT 757], (14) **Rama Niranjana Kajaria vs. Sheo Prakash Kajaria** [2015 (4) KLT Suppl. 97 (SC)], (15) **Bhagavathy Amma & Others vs. Narayana Pillai** (1966 KLT 1161), (16) **Kochunatayana Pillai vs. Kumara Pillai** (1992 KHC 86), (17) **Puthumana Meenakshi Amma vs. Puthumana Kalliani Amma and Others** [2010 (4) KHC 282], (18) **K. Chandran vs. K.Haridas** and (19) **Sreedharan Pillai**

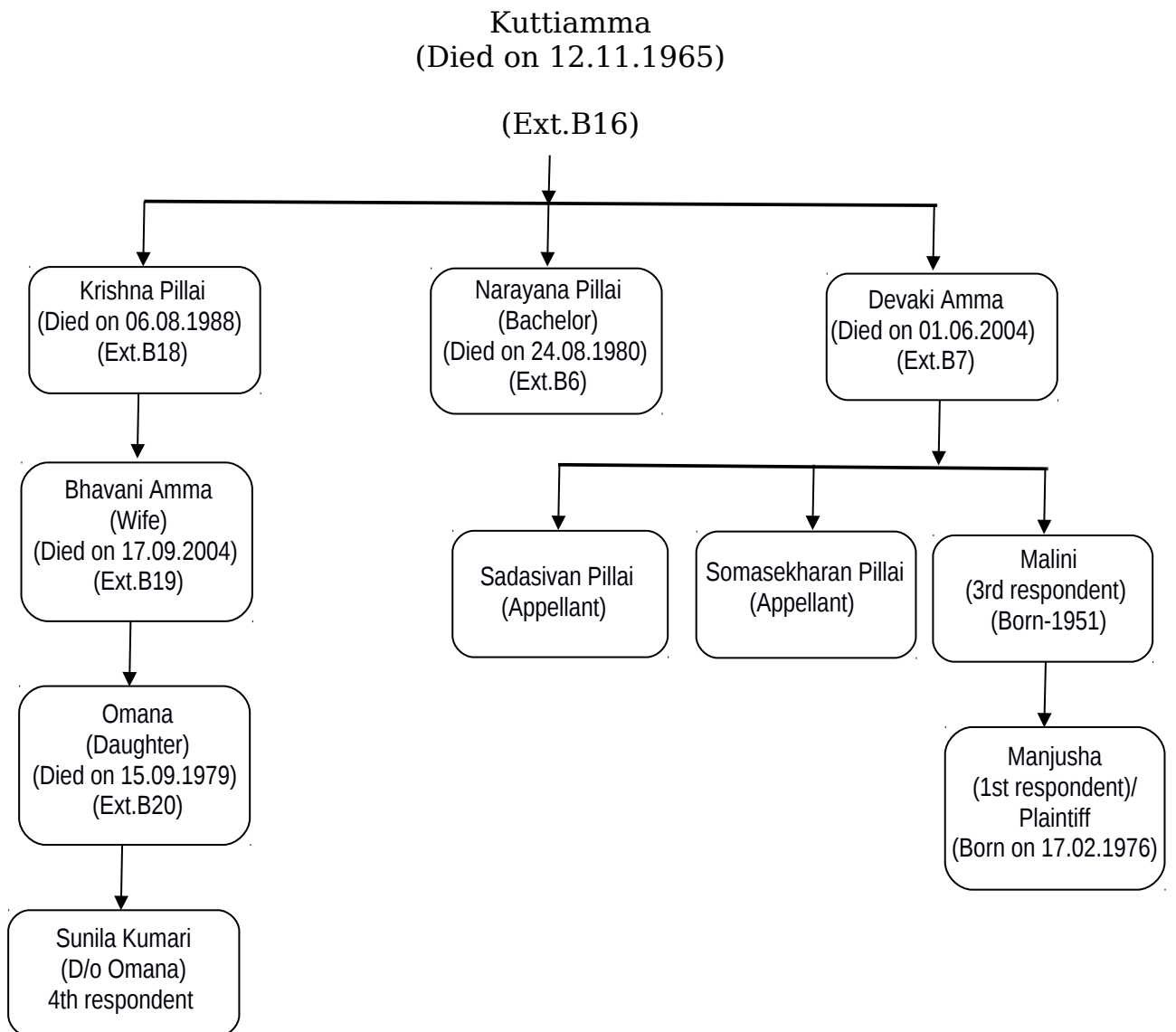
vs. Narayana Pillai (1959 KLT 775).

29. The learned counsel for the additional fourth defendant / fourth respondent contended that she has filed cross appeal, as the share allotted to her is inadequate. As per law, after the enactment of Hindu Succession Act, a female, to whom Marumakkathayam law is applicable, if dies intestate, her succession is governed under the Hindu Succession Act. Therefore, as on the death of Kuttiamma, her ancestor, Krishna Pillai is entitled to a fractional share of Kuttiamma in plaint A schedule, which will devolve on her. She is entitled to 32 cents. The judgment and preliminary decree may be reversed and she may be allotted proportionate fractional share.

30. I have considered the pleadings of parties, evaluated the evidence on record and the law on the point advanced by both sides.

31. Admittedly, the parties are successors in interest of Kuttiamma, who was a member of the Thevalakkattu Tharavadu. Kuttiamma had three children, Devakiamma, Krishna Pillai and Narayana Pillai.

32. The genealogical table of the common ancestress Kuttiamma and her offspring and lineal descendants of the Thevalakkattu Tharavadu with relevant dates are as follows :



The relationship of the above referred persons are admitted by the parties to this litigation and the findings in this regard made

by the trial court warrants no interference.

33. By virtue of Ext.A8 partition deed No.3306/1111 M.E., the property of Thevalakkattu Tharavadu was partitioned and D schedule was allotted to Kuttiamma, her son Krishna Pillai and the minor children of Kuttiamma named Narayana Pillai and Devakiamma. For more clarity, the relevant recitals in Ext.A8 are reproduced in vernacular as follows :

"4. ഈ വക സ്വത്തുക്കളെ പ്രത്യേകം പ്രത്യേകം ഭാഗിച്ച് തിരിച്ച് നടക്കുന്നത് ഐശ്വര്യത്തിനും യോജിപ്പിനും നന്നെന്ന് കണ്ട് നമ്മളുടെ എല്ലാവരുടേയും പൂർണ്ണ സമ്മതപ്രകാരം വസ്തുക്കളുടെ പാട്ടും വില മുതലായത് മദ്ധ്യസ്ഥൻമാർ മുഖാന്തിരം തിട്ടപ്പെടുത്തി 12 ഓഹരികളായി ഭാഗിച്ച് എ, ബി, സി, ഡി, ഇ എന്ന് അഞ്ച് പട്ടികകളാക്കി തിരിച്ചിരിക്കുന്നതിനാൽ എ പട്ടികവസ്തുവകകളും കടവും ഒന്നാംകക്ഷി കുമാരപിള്ളയും ബി പട്ടികസ്വത്ത് രണ്ടാംകക്ഷി ഗോപാലപിള്ളയും സി പട്ടിക സ്വത്തുക്കളും കടവും അഞ്ചും ഏഴും കക്ഷികളും ഏഴാംകക്ഷിയുടെ മക്കളായ മേൽവിവരിച്ച രണ്ട് മൈനറുകളും ഡി പട്ടിക സ്വത്തുക്കളും കടവും മൂന്നും ആറും കക്ഷികളും ആറാംകക്ഷിയുടെ മക്കളായ മേൽപറഞ്ഞ രണ്ട് മൈനറുകളും ഇ പട്ടിക സ്വത്തുക്കൾ എട്ടാംകക്ഷിയും മകൻ മേൽപറഞ്ഞ മൈനറും ഇന്നുമുതൽ അവരവരുടെ ഭാഗമായി സ്വീകരിച്ച് കൈവശപ്പെടുത്തിയിരിക്കുന്നതിനാൽ അതാത് ഭാഗം വസ്തുക്കൾ അതാതു പട്ടികക്കാരുടെ പേരിൽ കൂട്ടി കരം തീർത്തും പട്ടയം പിടിച്ചും മൈനറുള്ള ഭാഗക്കാർ അവരെ രക്ഷിച്ചും അന്യ കൈവശംഇരിക്കുന്ന വസ്തു ഒഴിപ്പിച്ചെടുത്തും മിച്ചവാരം തീർക്കേണ്ടവർ കിഴുക്കായും മേലാലും തീർത്തും പിരിഞ്ഞു കിട്ടുവാനായി പറയുന്ന വകകൾ

പിരിച്ചെടുത്തും ക്രയവിക്രയാദി സർവ്വസ്വാതന്ത്ര്യമായി അനുഭവിച്ചു കൊള്ളേണ്ടതാകുന്നു.”

"ഡി പട്ടിക വസ്തുവിവരം നമ്പർ 1. ടി പകുതി കലശേഖരമംഗലം മുറിയിൽ മഠത്തിപ്പുറ നിലും പൈൻപറമ്പിലും മേക്ക് തണ്ടാപ്പള്ളി പറമ്പിനും തണ്ടാപ്പള്ളിചിറയ്ക്കും വടക്ക് തെന്നാട്ടുപറമ്പുകൾക്കും തെയ്യോത്ത് പറമ്പിനും കിഴക്ക് ചെറുകോൻ വക പുരയിടത്തിനും തെക്ക് മംഗലശ്ശേരി മനയ്ക്കൽ വക കാണം സർവ്വെ 19/3, ഒരേക്കർ 75 സെന്റുള്ള ചാണിക്കണ്ടത്തിൽ പുരയിടവും മാളേയ്ക്കൽ പുരയിടവും കൂടി ഒന്നായി കിടക്കുന്നതിൽ തെക്കുഭാഗം തെക്കേഅറ്റത്തു നിന്നും മേക്കതിര് തെൻവടൽ പന്ത്രണ്ടേമുക്കാലും കിഴക്ക് തെൻവടൽ പന്ത്രണ്ടേഅരയ്ക്കാലും പടിഞ്ഞാററ്റത്തു നിന്നും തെക്കുകിഴമേൽ പതിനാറരയും കമ്പളവ് ഉള്ളതും അതിനു കിഴക്കുതെക്കറ്റത്തുനിന്നും കിഴക്കുതെൻവടൽ പത്തേമുക്കാലും മേക്ക് പത്തരയ്ക്കാലും കിഴമേൽ തെക്കതിര് ആരേമുക്കാലും കമ്പളവ് ഉള്ളതുമായ വീതം പുരയിടങ്ങൾ നീക്കി 98-സെന്റുള്ള മാളേയ്ക്കൽ പറമ്പും വീതം ചിറയും വൃക്ഷാദികളും ടി പുരയിടത്തിലിരിപ്പുള്ള കെട്ടിടവും നമ്പർ 2. ടി എലുകയ്ക്കകത്ത് ടി ഇനം സർവ്വെ 19/4, 11 സെന്റുള്ള നിലവും നമ്പർ 3. ടി പകുതിയിൽ തുരുത്തുമേൽ മുറിയിൽ തുരുത്തുമേൽ പാടത്ത് നിലത്തിനും മേക്ക് നിലങ്ങൾക്കും വടക്ക് ടിയ്ക്കും കിഴക്ക് തോടിനും തെക്ക് വൈക്കത്തുദേവസ്വം പാട്ടം സർവ്വെ 12/9 വീതം 37 സെന്റും 12/10 വീതം 23 സെന്റും ഉൾപ്പെടെ 60 സെന്റുമുള്ള നിലം നമ്പർ 4. 1107 ൽ രജിസ്റ്റർ 2985-ാം നമ്പരായി നടപ്പുപണയം ഉള്ള മറവതുരുത്ത് പകുതിയിൽ ടി മുറിയിൽ പുരയിത്തിനും മേക്ക് കോടംതുരുത്തി വക നിലത്തിനും വടക്ക് കുഞ്ഞിപ്പെണ്ണ് വക പുരയിത്തിനും കോടംതുരുത്തി വക നിലത്തിനും കിഴക്ക് കോടംതുരുത്തി വക നിലത്തിനും തെക്ക് പണ്ടാരവക പാട്ടം സർവ്വെ 94/2, 22 സെന്റുള്ള പറക്കാട്ടുപുരയിടവും

കുഞ്ഞിപ്പെണ്ണ് വക പുരയിടത്തിനും കോടംതുരുത്തി വക നിലത്തിനും മേക്ക് കുഞ്ഞിപ്പെണ്ണ് വക നിലത്തിനും പെരുമാപ്പിള്ള വക പറയത്തറ പുരയിടത്തിനും വടക്ക് ടി പുരയിടത്തിനും കോടംതുരുത്തി വക മ്യാലിനും കിഴക്ക് കോടംതുരുത്തി വക നിലത്തിനും ടി ഇനം 112/1, 11 സെന്റ് മ്യാൽ നിലവും 111/10, ഒരേക്കർ 18 സെന്റുള്ളതിൽ കിഴക്കുവടക്കടുത്ത് 14 സെന്റും ഉൾപ്പെടെ 25 സെന്റുള്ള മ്യാൽ നിലവും നികർത്തും പറയത്തറയ്ക്ക് കിഴക്കു വടക്ക് തോട്ടുവാ നിലത്തിനും തോടിനും പറയത്തറ പുരയിടത്തിനും ഈഴവാത്തി വക പുരയിടത്തിനും മേക്ക് പറയത്തറയ്ക്കും വളയംകിരാഴം വക പരുയിടത്തിനും വടക്ക് വഴുപാട്ടു വക നിലത്തിനും കിഴക്ക് കോടംതുരുത്തി വക നിലത്തിനും തെക്ക് ടി എന്നും സർവ്വെ 112/3, 41 സെന്റുള്ള പെരുമാപ്പിള്ള വക പറയത്തറ വീതം പറമ്പിനു വടക്കുംമേക്കുമായി കിടക്കുന്ന നിലം നികർത്തുകളും ടി വസ്തുക്കളിലെ വൃക്ഷാദികളും പുരയിടത്തിനും നിലത്തിനും മേക്ക് കുമ്പക്കാട്ടുവക നിലത്തിനും വടക്ക് കുഞ്ഞിപ്പെണ്ണ് വക പുരയിടത്തിനും കിഴക്ക് കോടംതുരുത്തി വക പുരയിടത്തിനും തെക്ക് ടി എന്നും സർവ്വെ 94/3 എ.സി 6 ഏക്കർ 6 സെന്റ് ഉള്ള മുഹപ്പുറത്ത് പാട്ടം പൊയ്യപ്പുറത്ത് താഴെ നിലത്തിൽ മേക്കുതെക്കടുത്ത് 5 ഏക്കർ 89 സെന്റ് കുമ്പക്കാട്ടേയ്ക്ക് പോക്കുനീക്കി മേക്കുവടക്കടുത്തുള്ള 17 സെന്റ് ഉള്ള രണ്ടുകണ്ടനിലവും ആറ്റിനും പുരയിടങ്ങൾക്കും മേക്ക് കോടംതുരുത്തുവക പുരയിടത്തിനും കുഞ്ഞിപ്പെണ്ണ് വക പുരയിടത്തിനും കോടംതുരുത്തുവക മ്യാൽ തോട്ടം ഉൾപ്പെട്ട പുരയിടങ്ങൾക്കും വടക്ക് മഴുപാട്ടുവക നിലത്തിനും നികർത്തിനും കിഴക്ക് ആറ്റിനും തെക്ക് ടി എന്നും സർവ്വെ 112/2 എ.സി 7 ഏക്കർ 78 സെന്റ് നിലത്തിൽ മേക്കടുത്ത് 4 ഏക്കർ 15 സെന്റ് നിലം വഴുപാട്ടുവകയ്ക്കുള്ളത് നീക്കി കിഴക്കടുത്ത് 3 ഏക്കർ 63 സെന്റിൽ കിഴക്കടുത്ത് 2 ഏക്കർ 26 സെന്റ് നിലത്തിൽ കിഴക്കടുത്ത് ഒരേക്കർ

98 സെന്റും ടി സർവ്വെ വിസ്തീർണ്ണത്തിൽ പെട്ട 28 സെന്റും ഉള്ള നിലത്തിൽ ഒന്നു പകുതി അവകാശവും ധനവും മേൽവിവരിച്ചതു പോലെ കലശേഖരമംഗലം ശ്രീമൂല കേരളാ പട്ടാര്യ സമാജത്തിലേയ്ക്ക് വീതത്തിന് കൊടുത്തു തീർക്കേണ്ട 10 ബ്രിട്ടീഷ് രൂപാ കടവും ആകുന്നു.”

34. A scrutiny of the above referred recitals in Ext.A8 reveals the following :

It needs to be noticed that as per Ext.A8, eight members, who attained majority and five minor children, viz. two minor children of Kuttiamma and three minor children of Karthiyayaniamma, totalling to 13 members were included in the partition. However, Narayaniamma, party No.4, who was issueless was not allotted any property and she was given life interest to take yield from the other schedules specified in the partition deed. The division was effected by partitioning the property into 12 shares, after excluding Narayaniamma. The D schedule was allotted to Kuttiamma and her three children, out of which, Krishna Pillai was a major and Narayana Pillai and Devakiamma were minors. Thus, it could be inferred that out of the 12 shares, Kuttiamma and her three children were allotted four shares.

35. Thereafter, as per Ext.A1 partition deed of the year 1124

M.E., the property allotted to the branch / Thavazhi of Kuttiamma was partitioned. The counsel for the appellant / first defendant contended that the Thevalakkattu Tharavadu was already partitioned and that is why there is a recital that parties are residing at Maleakkal from Thevalakkattu. The said contention will be considered later on. For clarity, the recitals in Ext.A1 are reproduced in vernacular as follows :

"താഴെ വിവരിക്കുന്ന സ്വത്തുക്കൾ നമ്മുടെ കുടുംബത്തിൽ നടത്തിയ വൈക്ക സബ് രജിസ്റ്റർ ആഫീസ് വക 1111 ലെ 3306-ാം നമ്പർ ഭാഗഉടമ്പടി പ്രകാരം നമ്മുടെ ശാഖക്ക് പൂർണ്ണസ്വാതന്ത്ര്യമായി തിരിച്ചുകിട്ടി കൈവശംവെച്ച ഒന്നാംകക്ഷിയുടെ ഭരണത്തിൽ ഏകയോഗക്ഷേമമായി നാം കഴിഞ്ഞു വരുന്നതാകുന്നു. മേൽ വിവരിച്ച വിധം ഒന്നാം കക്ഷിയുടെ ഭരണത്തിലും മറ്റ് സ്വത്തുക്കൾ സ്ഥിതിചെയ്യുന്നതെങ്കിലും അവകൾ മേലാൽ ഭാഗിച്ചുനടക്കുന്നത് ഒരോരുത്തരുടേയും ഭാവി ശ്രേയസ്സിനു നിതാനമായിരിക്കുമെന്ന് മൂന്നാംകക്ഷി അഭിപ്രയപ്പെട്ടതിനെ മറുകക്ഷികൾ പരിപൂർണ്ണമായി സമ്മതിച്ചതിനനുസരിച്ച് ഈ ഭാഗഉടമ്പടി എഴുതുവാൻ ഇടയായിട്ടുള്ളതും മേലാൽ ഇതിലെ നിശ്ചയങ്ങൾ അനുസരിച്ച് ഒരോരുത്തരും പെരുമാറിക്കൊള്ളേണ്ടതാകുന്നു. കടങ്ങൾ യാതൊന്നും ഇല്ലാത്തതിനാൽ ഭാഗാർഹമായ സ്വത്തുക്കൾ മദ്ധ്യസ്ഥൻമാർ മുഖാന്തിരം പാട്ടം വില മുതലായതു കണ്ട് നൽപ്പതിൽപ്പ് ശരിയിട്ട് നിയമാനുസരണം ആളോഹരി കണക്കാക്കി ആറായി അംഗിച്ചതിൽ സമ്മതപ്രകാരം ഒന്നാംകക്ഷിക്കുള്ള ഒരോഹരി സ്വത്ത് ഏ പട്ടികയായും രണ്ടാംകക്ഷി... 2....ക്കുള്ള ഓഹരി സ്വത്ത് ബി പട്ടികയായും മൂന്നും നാലും കക്ഷികൾക്കും നാലാംകക്ഷിയുടെ മകൾക്കും കൂടിയുള്ള നാലോഹരി സ്വത്തുക്കൾ സി പട്ടികയായും ഇതിനടിയിൽ ചേർത്തിരിക്കുന്നതു കൊണ്ട് ഏ പട്ടിക സ്വത്ത് ഒന്നാം കക്ഷി കൃഷ്ണപിള്ളയും ബി പട്ടിക വസ്തു രണ്ടാം കക്ഷി നാരായണപിള്ളയും സി പട്ടിക സ്വത്തുക്കൾ മൂന്നും നാലും കക്ഷികളും മൈനൻ സദാശിവൻപിള്ള സോമശേഖരൻ പിള്ള ഇവരുടേയും ഭാഗവീതമായി

പരസ്പര ബാധ്യത വിട്ട് ഇന്നുമുതൽ അവരവർ കൈവശം
 എടുത്തിരിക്കുന്നതിനാൽ അതാതുഭാഗം വസ്തുക്കൾ അതാതുപട്ടികക്കാരുടെ
 പേരിൽ കൂട്ടി കരം ജന്മിക്കരം തീർത്തും പട്ടയം പിടിച്ചും സി പട്ടികക്കാർ
 മൈനറുകളെ സംരക്ഷണ ചെയ്തും പ്രത്യേകം പ്രത്യേകം
 ക്രയവിക്രയസർവ്വസ്വാതന്ത്ര്യമായി അനുഭവിച്ചു കൊള്ളേണ്ടതാകുന്നു.”

36. It needs to be noticed that the C schedule is jointly allotted to Kuttiamma, Devakiamma and the minors Sadasivan Pillai and Somasekharan Pillai, who are the defendants 1 and 2. The third defendant Malini, the mother of the plaintiff was not born at the time of Ext.A1 partition deed. The contention of the counsel for the appellant is that the terms of Ext.A1 clearly points out destruction of joint status and parties therein have to enjoy their respective shares exclusively by themselves as tenants in common. Nowhere in Ext.A1 it is mentioned that the properties have been allotted to different thavazhees. Therefore, it is contended that Ext.A1 was an exvitermine partition deed, whereby the Thevalakkattu Tharavadu and the property does not further have the character of Thavazhi property. Therefore, the plaintiff cannot claim to be a member of the Thavazhi and she does not get any birth interest in the property.

37. Per contra, the counsel for the first respondent / plaintiff contended that as per the recitals in Ext.A1, C schedule was

allotted to a multi-member unit, which is a natural group, consisting of a female member and her descendants in the female line and in short, it is a Thavazhi. In such a situation, the Tharavadu continues after the partition and property allotted to the Thavazhi as per Ext.A1 gets the character of Tharavadu or Thavazhi property. It was contended that Ext.A1 is not an exvitermine partition deed.

38. Per contra, the counsel for the appellant / first defendant contended that since per capita shares were allotted as per Ext.A1 and there is no reference to the allotment of the properties to a Thavazhi, the status of the Tharavadu is disrupted and the sharers of C schedule are tenants in common.

39. The issue as to whether the per capita allotment of shares in Exts.A1 and A8 would disrupt the status of a Tharavadu and whether such allotment, the parties were allotted individual shares pursuant to which, they held the properties independently is a mixed question of fact and law. By the mere fact that it is stated in Ext.A1, the parties are residing in Maleakkal from Thevalakkattu, the full and final partition of the tarwad or thavazhi cannot be inferred. To resolve the said issue, the

judicial precedents have to be looked into. Though the counsel for the appellant and respondents have produced a plethora of decisions, the law on the point germane for consideration settled by judicial precedents in this case is stated as follows :

40. In **Ramachandran v. Vijayan** [2024 KHC OnLine 6645], the Hon'ble Supreme Court considered the law regarding Marumakkathayam Law, the aspects of thavazhi and the divulgence of opinion regarding the majority view and minority view in **Mary v. Bhasura Devi** [1967 KLT 430] and held as follows :

“41. The majority placed its reliance on the pre - amendment version whereunder by virtue of subsection (2) the position of law was that the share obtained by a thavazhi shall be taken by it with all incidents of it being a tharwad property. The above - mentioned amendment removes the contents of subsection (2) which demonstrates legislative intent to change the existing position of law. That apart, per the discussion made above, a single person cannot form a thavazhi and, therefore, even the unamended S.38 cannot be read to be placing an obligation upon a single female inheriting property by way of partition, to hold it as tharwad property. We are in complete

agreement with what Govindan Nair, J., observed in Para 56 of his dissenting judgment, which reads thus :

"56. The same rule cannot apply to the case of an individual member who obtain his share for himself. The property in such cases ceases to be joint property after partition. What really happens on partition is that the joint nature of the property is destroyed. I conceive that right by birth can be taken in property by a Marumakkathayee only if that property at the time of his birth was joint property. The property allotted to a roup will be joint property and so children born in that group who normally take an interest in tarwad property acquire an interest in the property allotted to the group. But the same cannot be said when an individual member holds property, for such property has ceased to be joint property. On partition (forgetting for the moment those groups who take jointly) what happens is the destruction of the joint nature of the property. This happens even when there is only a division in status."

42. Encapsulating the above discussion with reference to the illustration given earlier, it follows that neither the majority nor the dissenting Judges of the Full Bench have any qualms with the fact that upon partition AD2 would hold the property as tharwad property, thereby protecting the interest of C, B and other future generations. The disagreement stems

when the devolution of property on partition upon AD1 is considered. The majority held that AD1 would become a single - member thavazhi and hold the property received by her as tharwad property protecting the interests of any children which, she may have in the future whereas the dissenting Judges held that since at the time of devolution AD1 did not have any children, she would acquire the property only in her own right.

43. Turning our attention back to the instant facts, it is not in dispute that Parukutty Amma and her descendants formed a thavazhi and had received the scheduled properties under item No.1 collectively. As we have already noticed above, the divergence of opinion between the minority and majority was in respect of single female(s) receiving property in partition. That obviously is not the case here. All five Judges appear to be ad idem when it comes to property being received at partition by females and members of her thavazhi. Since the properties were received by the thavazhi and not by a woman who is single, the property is unquestionably tharwad property. Para 55 of the dissenting view expressed by Govindan Nair, J. captures as to how groups inherit property post - partition and how such property continues to hold tharwad characteristics. It runs as under:

"55. It is true that a tarwad need not always break up into its ultimate components; there may be branch divisions or some members may continue joint and continue to hold property and there may be several such groups and there can be a mixture of individuals holding property obtained on partition along with groups who hold jointly property allotted to each of those groups. The distinction to notice is that those groups hold property allotted to each group jointly. No member of that group has any separate interest which he can claim as his own. His interests in the property allotted to the group is of an identical nature as the interests he had in the entire tarwad property before partition. In other words, the group holds the property with all the incidents of tarwad property as joint property. It is because property is so held as joint tarwad property that future tarwad members born in that group take an interest in the property allotted to that group."(Emphasis supplied)

44. Since there is no difference of opinion in this regard and further since the case before us is the inheritance of property by a group (branch 5), it falls in the second category (i.e. the category about which there is no dispute) no question arises as to determining the correctness of the view expressed, as is desired for us to do by the original - defendants."

41. A divergent view was taken in **Cherukunnon Shantha v. Kallakandi Sahadevan** [2011 0 Supreme(Ker) 245], wherein, the court held that the property allotted in division of tarwad to its members, on the basis of per capita share, even if taken by them as a group, after the amendment, has to be treated as taken as tenants in common and not as joint tenants, subject to the rights of the children born to the female members in the group till the commencement of Kerala Hindu Joint Family Abolition Act, 1975, to claim right in the share allotted to their mother as thavazhi property.

42. However, in **Ramachandran's** case cited supra, 2024 KHC OnLine 6645, the Hon'ble Supreme Court has clarified the law on the point regarding allotment to a group. This decision was relied on in **Dr.A.P.Sunil Kumar v. Savithri Amma and Ors** [2025 KHC(Online) 10679] by the Division Bench. Hence the decision of the Single Bench in **Cherukunnon Shantha's** case has to be distinguished. In **Dr.A.P.Sunil Kumar's** case, it was held as follows :

“ 13. The contention of the plaintiffs is that, the allotment under Ext.B7 final decree is to the natural thavazhi of Naniamma and hence it retains the

character of thavazhi property. However, according to the contesting respondents, under Ext.B6 preliminary decree, there was a per capita division resulting in severance of status and the nature of the property. The sharers hold the property as their separate property. The character of thavazhi property is thus lost, it is claimed. In reply the learned Senior Counsel for the plaintiffs submitted that, a partition in the tarwad could only be on per capita basis.

14. Admittedly the parties are Marumakkattayees governed by the Madras Marumakkattayam Act. Concept of partition was foreign to the pristine Marumakkattayam Law. Section 38 of the Madras Marumakkattayam Act enabled a thavazhi to seek for partition. The Section reads thus :-

“38. (1) Any tavazhi represented by the majority of its major members may claim to take its share of all the properties of the tarwad over which it has power of disposal and separate from the tarwad :

Provided that no tavazhi shall claim to be divided from the tarwad during the lifetime of an ancestress common to such tavazhi and to any other tavazhi or tavazhis of the tarwad, except with the consent of such ancestress, if she is a member of the tarwad.

(2) The share obtained by the tavazhi shall be taken

by it with the incidents of tarwad property.

Explanation.- For the purpose of this chapter, a male member of a tarwad or a female member thereof without any living child or descendant in the female line, shall be deemed to be a tavazhi if he or she has no living female ascendant who is a member of the tarwad."

15. Section 38(2) provided that the share obtained by the thavazhi on such partition, retains all the incidents of tarwad property.

16. Section 40 of the Act provided that such partition in the tarwad is to be on per capita basis.

The Section reads thus:

"40 (1) In the case referred to in section 38, the tavazhi shall be entitled to such share of the tarwad properties as would fall to the tavazhi if a division per capita were made among all the members of the tarwad then living.

(2) In the case referred to in section 39, the member who claims or is compelled to divide from the tarwad, shall be entitled to such share of the tarwad properties as would fall to such member if a division per capita were made among all the members of the tarwad then living."

17.....

.....

*Explanation 2 to the Section, akin to Section 40 of the Original Act, provided for per capita division among the members who claim partition. As is evident from Explanation-1, two or more such members claiming their shares, could still enjoy the properties jointly with all the incidents of tarwad property. **Therefore, the mere fact that there has been a per capita division, need not necessarily result in alteration in the character of the property as tarwad property. It was always open for the members who claimed partition, to remain joint with all the incidents of tarwad property.***

43. In this case, oral evidence of parties has not much relevance, while deciding the status of the partition and Exts.A1 and A8 documents are to be analysed. On a conjoint analysis of Exts.A1 and A8 partition deeds, it could be discerned that properties were allotted to the common ancestress Kuttiamma and her lineal descendants, considering them as a natural group. The four shares allotted as per Ext.A8, fluctuated to six shares, after birth of children to Devakiamma, viz. the defendants 1 and 2 and the properties were further partitioned as per Ext.A1 and the male children Krishna Pillai and Narayana Pillai were given

separate independent shares and thereafter, Kuttiamma and her descendants through her female descendant Devakiamma were allotted the C schedule, as a natural group. It needs to be noticed that the per capita shares were assessed or calculated for equalisation of the shares to each member of the group or thavazhi. This is evident from the lesser extent of property allotted to Krishna Pillai and Narayana Pillai, who were allotted 31 cents of garden land and 40 cents of paddy land, whereas, C schedule allotted to the group of Kuttiamma, Devakiamma and the minors had an extent of 78 cents of garden land and a house and 20 cents of paddy land (98 cents). Moreover, as per C schedule, minors were also allotted property along with their mother and grandmother. All these circumstances show that Ext.A1 was not an exvitermine partition, though shares were allotted on a per capita basis. In view of the decision reported in **Dr.A.P. Sunilkumar**'s case, the mere fact that there has been a per capita division need not necessarily result in the alteration in the character of the property as Tharavadu / thavazhi property. It is true that in Ext.A1, the fact that the property to Kuttiamma and her lineal descendants is not stated to be allotted to a thavazhi as such. However, it is a natural group consisting

of a female ancestress and her lineal descendants through the female line. In the said circumstances, by the mere fact that it is not mentioned in Ext.A1 that C schedule property was allotted to the thavazhi, as the property was allotted to a natural group consisting of female ancestress and her lineal descendants through the female line, the intention was to allot the property to the thavazhi. It was always open for the members who claim partition to remain join with all the incidents of Tharavadu property. It needs to be noticed that the trial court has rightly placed reliance in the decision of the Hon'ble High Court in **Rema Devi and Others v. Gopalakrishnan** [2008 (2) KLT 757] and held that a Marumakkathayam Tharavadu is a fluctuating body of persons forming a joint family with community of property, community of interest, unity of possession, right by birth and survivorship. Thus it is held that the contention of the appellant that Ext.A1 denotes an exvitermine partition is not tenable. The C schedule as per Ext.A1 was allotted to a natural group, which constituted the Thavazhi of Kuttiamma and her lineal descendants. As and when a new member is born in the Thavazhi, by birth right proprietary rights are acquired in the Thavazhi property. Therefore, though at the time of execution

of Ext.A1, Malini, the daughter of Devakiamma, and Manjusha were not born, they would acquire birth right, if they were born before coming into force of the Joint Hindu Family Abolition Act. The plaintiff Manjusha was born on 17.02.1976, as per Ext.A11, i.e. before the Joint Hindu Family Abolition Act came into force on 01.12.1976.

44. In **Chellamma Kamalamma V. Narayana Pillai** [1993 KHC 35], it was held as follows :

“50. We may finally summarise as follows :

(1) S.17 of the Hindu Succession Act, 1956 will govern the law of succession on the death of males or females who were governed by the Marumakkathayam system if such persons were

(i) living as on 18-6-1956 when the Hindu Succession Act, 1956 came into force and they died before 1-12-1976 when the Kerala Joint Hindu Family System (Abolition) Act, 1975 came into force,

(ii) living as on 18-6-1956 when the Hindu Succession Act, 1956 came into force and who dies on or after 1-12-1976 when the Kerala Joint Hindu Family System (Abolition) Act, 1975 came into force,

(iii) born on or after 18-6-1956 when the Hindu Succession Act, 1956 came into force and who died before 1-12-1976 when the Kerala Joint Hindu Family

System (Abolition) Act, 1975 came into force, and (iv) born on or after 18-6-1956 when the Hindu Succession Act, 1956 came into force but before 1-12-1976 and who died on or after 1-12-1976 when the Kerala Joint Hindu Family System (Abolition) Act, 1975 came into force.

(2) S.17 of the Hindu Succession Act, 1956 will not, however, govern the law of succession of males or females if such persons were born on or after 1-12-1976 and died thereafter. Succession to them would be governed by the provisions of the Hindu Succession Act, 1956 other than the provisions applicable to those governed by the Marumakkathayam system.

(3) We approve the decision of the learned Single Judge in Madhavi Amma v. Kalliani Amma (1988 (2) KLT 964) and of the Division Bench in Bhaskaran v. Kalliani (1990 (2) KLT 749). We overrule the observations to the contrary in Saraswathy Amma v. Radhamma (1990 (2) KLT 183)."

45. Among Marumakkathayees, after a thavazhi partition allotting a joint share to the mother and daughter (retaining tarwad incidents) alongside separate shares to sons and the mother, if the mother dies intestate after 1956, the son is entitled to a share in her interest in the joint thavazhi property. Under Sec.7(1) of the Hindu Succession Act, 1956 (HSA), her interest in thavazhi / tarwad property devolves by intestate

succession under the Hindu Succession Act (not Marumakkathayam law), deemed to be as her absolute per capita share as if partitioned immediately before death, which then passes to her Class I heirs (including sons and daughters equally under Section 15). Post-1958 amendment to Section 38 of the Madras Marumakkattayam Act, partitions are per capita (Explanation 2), but groups like mother-daughter may hold jointly with tarwad incidents (Explanation 1); Section 7 of Hindu Succession Act specifically applies to Marumakkathayees dying after 1956: thavazhi interest devolves under Hindu Succession Act intestate succession provisions, deemed to be absolute share allotted per capita before death. Mother's separate shares (from partition) and her notional share in joint thavazhi property devolve under Hindu Succession Act Section 15 to sons/daughters equally as tenants-in-common (Section 19); sons' prior separated shares unaffected.

46. In this case, it is undisputed that Kuttiamma died intestate in 1965 and it is proved as per Ext.B16 also. Therefore, on the death of Kuttiamma, as per the provisions of the Hindu Succession Act, her undivided fractional share over plaint A schedule devolves equally on Krishna Pillai, Narayana Pillai and

Devakiamma. On the death of Narayana Pillai intestate and issueless in the year 1980, his property is succeeded in equal share by Devakiamma and Krishna Pillai, as per Sec.8 of the Hindu Succession Act. The trial court has appreciated evidence and correctly held that the additional fourth respondent, who has also filed cross-appeal is the only surviving lineal descendant of Krishna Pillai. Hence, the additional fourth defendant / fourth respondent is entitled to the corresponding shares devolved on Krishna Pillai, pursuant to the intestate death of Kuttiamma and Narayana Pillai over the respective plaint schedules.

47. The plaintiff has not filed any appeal against the denial of right in plaint B schedule, plaint C schedule, plaint D to I schedule and plaint J schedule property. Therefore, the said findings cannot be interfered. The finding of the trial court that the plaintiff would get birth right over plaint A schedule and 20 cents of plaint B schedule is upheld. So also, the additional fourth defendant would get a fractional right over the said schedule, which devolved on Krishna Pillai, pursuant to the intestate succession of Kuttiamma, Krishna Pillai and Narayana Pillai.

48. It is found that the judgment and decree of the trial court regarding the legal basis of partition regarding the character of thavazhi property comprised in plaint A schedule and 20 cents of plaint B schedule is found sustainable. However, since no share was allotted to additional fourth defendant / cross-appellant, the said finding regarding allotment of fractional shares is to be reversed and a fresh preliminary decree is required to be passed in favour of the additional fourth defendant / cross-appellant / 4th respondent allotting her fractional share. The allotment of the proportion of shares made by the trial court in the preliminary decree without considering the entitlement of additional fourth defendant / cross appellant in the plaint schedule properties is not sustainable. As per Ext.A1 partition deed, 78 cents of property, which is scheduled as plaint A schedule and 20 cents of paddy land (which forms part of plaint B schedule 60 cents excluding 40 cents allotted to Narayana Pillai as per B schedule in Ext.A1), which forms part of plaint B schedule is allotted to the thavazhi. The trial court has not allotted any share to the cross-appellant / fourth defendant in the said property.

49. It needs to be noticed that Kuttiamma died in 1965, as proved Ext.B16 death certificate. Though the plaint A schedule

and 20 cents in plaint B schedule was allotted to the thavazhi of Kuttiamma and she was a member of the thavazhi, since she died intestate, after the enactment of Hindu Succession Act, the devolution of her right would be governed as per Sec.17 of the Hindu Succession Act (in view of the decision in **Chellamma's** case cited supra). It needs to be noticed that Narayana Pillai predeceased Krishna Pillai in the year 1980 and Krishna Pillai died in the year 1988 and Devakiamma died in the year 2004. Therefore, at the time of death of Kuttiamma, her undivided proportionate share in the plaint A schedule property and 20 cents in plaint B schedule would devolve equally on Krishna Pillai, Narayana Pillai and Devakiamma. Therefore, immediately on the death of Kuttiamma, 1/3rd of her undivided right in plaint A schedule would be inherited by Krishna Pillai, Narayana Pillai and Devakiamma. Thereafter, there are four members of the thavazhi. Since Devakiamma was a member of the thavazhi, her share would be in the common pool of the thavazhi. It needs to be noticed that the membership of the thavazhi fluctuates on the birth of a new member, which inversely affects the proportion of the then existing members. When the plaintiff was born on 17.02.1976, she automatically became a member of the thavazhi

by birth right and she would get a share in the thavazhi property. However, the additional fourth defendant would also obtain proportionate right in plaint A schedule consequent to the intestate death of Krishna Pillai and Narayana Pillai.

50. The trial court has not properly calculated and allotted the shares to additional fourth defendant in the impugned judgment and preliminary decree.

51. The plaintiff has not challenged the findings of the trial court regarding the other reliefs granted. Therefore, the findings of the trial court in the preliminary decree regarding the other reliefs except concerning relief No.1 need not be interfered with.

52. In the interest of justice, the allotment and calculation of fractional shares to the respective sharers including the cross appellant / additional fourth respondent is to be done properly by the trial court and for the said purpose, the appeal can be remanded back to the trial court to pass a modified preliminary decree. The remand is necessitated since the calculation and allotment of fractional shares to additional fourth defendant is to be done by the trial court in the interest of justice and it involves

mathematical calculations and further factual and legal aspects are also to be considered, including further evidence, if any, required to be adduced for the said limited purpose. The point is found accordingly.

In the result,

- The cross-appeal filed by the additional fourth defendant / fourth respondent is allowed and the appeal is dismissed.
- The judgment and decree of the trial court to the extent of not allotting shares to additional fourth defendant in plaint A schedule and 20 cents of B schedule is reversed and the matter is remanded back for the limited purpose of allotting shares to the additional fourth defendant.
- The trial court may permit parties to adduce additional evidence, if any required for the limited purpose of allotting and calculating the fractional proportionate share of the additional fourth defendant, as directed above.
- The trial court is directed to pass a modified judgment and preliminary decree by incorporating

the fractional share of additional fourth defendant / cross appellant also as a sharer and allotting her, her proportionate fractional share in the said properties (plaint A schedule and 20 cents of B schedule) along with the other sharers, within three months of receipt of the copy of this judgment.

- Thereafter, the trial court is directed to proceed for final decree, as per the direction of the appellate court in **Kattukandi Edathil Krishnan and Ors. v. Kattukandi Edathil Valsan and Ors.** [2022 (16) SCC 71].
- The other reliefs passed by the trial court are confirmed.
- The parties are directed to appear before the trial court on 26.06.2026.

Dictated to the Confdl. Asst., transcribed and typed by her, corrected by me and pronounced in open Court, on this the 22nd day of May, 2026.

Sd/-

**Manoj M.
District Judge**

APPENDIX : NIL

Id/-

District Judge.

// True Copy //

Copied by :
Compared by :

By Order
Sd/-
Sheristadar