

**IN THE COURT OF THE ADDL. DISTRICT JUDGE-V,  
KOTTAYAM**

**Present:- Sri. Ranjith Krishnan N.,**  
Additional District Judge-V, Kottayam

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

**AS.No.86/2022**

**(Against the Judgment and Decree in OS.No.07/2019 of  
Sub Court, Pala)**

**Appellant:**

Mani Luke @ Kuttan, aged 61 years, S/o. Late K.M.Luke, Kaithakkal Plavunilkkumkalayil House, Kalathoor Kara, Kanakkary Village, Kalathoor P.O., Meenachil Taluk, Kottayam District, Now residing at Arium, Creekside Apt:3620, Huffines Blvd, Unit No.3123, Carrolltor, Texas 75010, USA, represented by his Power of Attorney Holder Baby Joseph, aged 67 years, Residing at Vattinjayil House, Vayala P.O., Vayala Kara, Kadaplamattom Village, Meenachil Taluk, Kottayam Dist.

By Adv. P.V.Joseph

**Respondents:**

1. Geetha Thomas, aged 63 years, W/o. Thomas, Thayyil House, Thellakom P.O., Padinjattumbhagom-Kara, Athirampuzha Village, Kottayam Taluk, Kottayam District.
2. Mini Johny, aged 58 years, W/o. Johny George, Kudilil House, Mallikasserry P.O., Poovarani (via), Elkulam Village, Meenachil Taluk, Kottayam Dist., Now residing at A-41, Shiv Tower, Near Sangam-Apartment, Ramdev Nagar Road, Ahmedabad.

3. Luke K.Luke, aged 56 years, S/o. Late K.M.Luke, Kaithakkal Plavunilkkumkalayil House, Kalathoor Kara, Kanapkkary Village, Kalathoor P.O., Meenachil Taluk, Kottayam District, now residing at 733 Mandlay Bay Drive, Lewisville, Texas 75056, USA.

R1 & R2 by Adv. Sasikumar Anickad  
R3 Vakalath not seen filed

This Appeal Suit having been finally heard on 26.03.2026 and the court on the same day delivered the following:-

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

Appeal is preferred against the judgment and decree of Sub Court, Pala in O.S. No.07/2019 dated 08.06.2022. This appeal was originally filed before the Honourable District Court, Kottayam, and subsequently made over to this Court for disposal.

2. Suit was one for partition. The trial court passed a preliminary decree for the partition against the first defendant.

3. The parties are hereinafter referred to as per their position in the suit as plaintiffs and defendants.

4. Summary of the averments in the plaint in brief is as follows:- Plaintiffs and defendants belong to the Christian

community. The plaintiffs are sisters and the defendants are their brothers. The plaintiffs and defendants are the legal heirs and successors of Professor K. M. Luke @ Luka Mani. The father of the plaintiffs and defendants was the owner of the plaint schedule properties. He obtained title and possession over the plaint schedule properties by virtue of Partition deed No.1694/1970 of SRO, Ettumanoor. The plaint schedule Item Nos.1 & 2 properties are described in the Item A of the said partition deed. K. M. Luke died intestate on 26.12.1993. Upon his death, the plaint schedule properties came into the joint ownership and possession of the plaintiffs, defendants as well as their mother Annamma. Their mother, Annamma Luke also expired on 24.05.2017. First defendant is presently residing in the USA. Despite that, the income from the plaint schedule item Nos.1 & 2 properties are being taken by first defendant, who had deputed a person named Pappa to collect the usufructs on his behalf. The first defendant was living in the residential house situated in the plaint schedule Item No.1 property until he left for USA in the year 2013. After the death of their parents, the plaintiffs demanded partition of the plaint schedule properties, but the first defendant was not willing for the same. When the plaintiffs informed that they would take recourse

through court, the first defendant expeditiously started felling the valuable trees in the plaint schedule properties. There is a cattle shed attached to the house situated in plaint schedule Item No.1. There are more than 500 yielding rubber trees in the plaint schedule Item No.1 property along with rubber roller shed attached to it. There is also a well and other valuable trees in plaint schedule Item No.1 property. On an average, 15 kilograms of rubber latex has been obtained from the rubber trees presently. The movables in the house were purchased using the funds of father and the same is scheduled as plaint schedule Item No.3. The plaintiffs are entitled to get  $\frac{1}{4}$  share each in the plaint schedule properties and the plaint schedule properties are liable to be partitioned into four equal shares. Despite sending a lawyer's notice seeking partition of the properties, the first defendant remained adamant. Hence the suit is filed for partition and separate possession of  $\frac{1}{4}$  share each of the plaintiffs in the plaint schedule Item Nos.1 and 2 properties and for recovery of ₹ 25,000/- each, being the value of  $\frac{1}{4}$  share out of ₹1,00,000 pertaining to the movable properties situated in the house. The defendants are also to be restrained from cutting and removing the valuable trees

standing in plaint schedule Item Nos.1 & 2 properties until the culmination of the proceedings. Hence the suit.

5. Defendants filed written statement contending as follows:- Suit is not maintainable and is filed on an experimental basis. The descriptions of the plaint schedule properties are not correct. Properties shown as plaint schedule Item No.2 has already been sold out and the same is now not in the name of the father. The rights of the mother and the second defendant over the plaint schedule properties were released in favour of the 1<sup>st</sup> defendant by a Release deed No. 1261/1994 of SRO, Ettumanoor. The said property was later conveyed by the first defendant, who was also the power of attorney holder of 2<sup>nd</sup> defendant, as per document No.887/2005 of SRO, Ettumanoor. The plaintiffs are married and were given dowry at the time of their marriage along with the remaining rights due to them. Even at the time of their marriage an amount equivalent to their share was given to the plaintiffs. In fact, first defendant is settled in India and had gone to America only to visit his children. The 1<sup>st</sup> defendant has been carrying out cultivation in plaint schedule Item No.1 property. The house situated in the property was renovated and the property which was lying at a

low level was reclaimed by filling sand and rocks using the funds of 1<sup>st</sup> defendant. About 260 rubber trees were planted by him in the property. For all these, the 1<sup>st</sup> defendant had spent about ₹ 20,00,000/- which he sourced from contract work and income from a thread rubber factory. The developments made in plaint schedule Item No.1 were never objected by plaintiffs or the second defendant and the same was done with their consent. In such circumstances, even if plaint schedule Item No.1 properties is found to be partible, the value of improvements made by first defendant has to be ascertained and the same may be allowed to be released from the plaintiffs and second defendant. The house situated in the property which was renovated using his funds may be allotted to his share. Thus, the defendant has never taken the income from the plaint schedule properties as alleged. The plaintiffs never made any demand for partition as claimed in the plaint. The furniture shown in plaint schedule Item No.3 was purchased using the funds of the first defendant and the same is not partible. The plaintiff have no cause of action against the defendant and the suit is liable to be dismissed.

**6.** The trial court had framed the following issues:

(1) Are the plaint schedule properties partable?

- (2) If so what are the shares entitled to each parties?
- (3) Are the plaintiffs entitled to get the share of profits as claimed?
- (4) Are the plaintiffs entitled to get a prohibitory injunction as prayed?
- (5) Reliefs and costs.

7. The first defendant took a specific contention in the written statement that he is entitled to get the value of improvements made by him in the plaint schedule Item No.1 property from the plaintiffs and defendants. On going through the materials on record in this case, it is seen that no issue regarding that aspect was framed by the trial Court. At the same time, it is seen that the evidence on record is sufficient to enable this court to determine that question. Order XLI Rule 24 of CPC empowers this Court to resettle issue, if necessary, for finally determining the suit, notwithstanding that the judgment of the court from whose decree the appellant is preferred has omitted to do so. Hence, invoking order XLI Rule 24 of CPC, the following additional issues are also framed as issue Nos. 6 and 7.

(i) Whether the first defendant has made constructions and effected any improvements in the suit property, and, if so, to what extent?

(ii) Whether the first defendant is entitled to get the value of her improvements which may fall in 1/4<sup>th</sup> share of the property that would be divided and given to the share of the plaintiff?

**8.** Both sides were heard.

**9.** From among the rival contentions, the following points arise for my consideration:-

1. Whether the impugned decree and judgment passed by the trial Court passing the preliminary decree for partition and permanent prohibitory injunction are legally sustainable.
2. Reliefs and costs.

**10. Point No.1:-** On consideration of the entire evidence on record, it is seen that the fact that plaintiff schedule property originally belonged to K.M Luke is undisputed. It is also not in dispute that the plaintiffs and defendants are the only legal heirs entitled to succeed to his assets after his death as well as his wife's death. There is also no dispute that plaintiff schedule Item Nos.1 & 4 properties are partible. During evidence, PW1 conceded that the plaintiffs are not seeking partition of plaintiff schedule Item No. 2 property, as the first defendant had raised a specific contention that plaintiff schedule Item No.2 is not



partible. Since PW1 herself admitted that plaintiffs are not claiming partition of plaint schedule Item No.2 property, the same is not liable to be partitioned.

**11.** The learned counsel for the appellant contended that the trial Court went wrong in decreeing ₹25,000 each to the plaintiffs and the second defendant as the value of movable items lying in the house situated in plaint schedule Item No.1 property without specifying from whom the amount is to be realized. According to the learned counsel, this renders the decree incomplete and non executable. Another contention raised by the learned counsel is that the trial Court ought to have found that the first defendant is entitled to the value of improvements effected by him in plaint schedule Item No. 1 property, relegating the determination of the quantum to the final decree stage.

**12.** Evidence in this case consists of the oral evidence of PW1 and Exts.A1 to A9 on the side of the plaintiffs and the oral evidence of DW1 and Exts.B1 to B9 on the side of the defendants. Ext.C1 is the commission report and Ext.C1(a) is the rough sketch prepared by the Advocate Commissioner and attached along with the report.

**13.** As the rest of things except the finding of trial Court pertaining to plaint Schedule Item No.3 property and entitlement of the first defendant to the value of improvements are undisputed, the findings of trial Court except on those aspects need no reconsideration. In the decretal portion of the preliminary decree, it is stated that the plaintiffs and defendants are entitled to get ₹ 25,000 each being the value of Item No. 3 movables. However, as rightly contended by the learned counsel for the appellant, it was neither specified in the discussion portion as to how this value was ascertained nor it was specified from whom the said amount is to be realized. As per the plaint, items such as three cots, three sofas, three table, one dining table, four chairs and a fridge was shown as plaint shedule item no.3 and plaintiffs have estimated a value of ₹ 1,00,000 for the same. Ext.C1 is the commissioner report and as per the said report the commissioner was sought to ascertain the movables stated as Item No. 3 in the plaint. The commissioner found one Samsung TV, one sofa set, one diwan cot, one dining table with 6 chairs, BPL fridge, one double cot, five single cot, three plastic chair, two table and one teapoy lying in the house situated in plaint schedule Item No.1 property. Even according to the plaintiffs, the first defendant

was residing in that house till the year 2013 whereas the father expired in the year 1993. The plaintiffs have no case that their mother has got any other source of income or that the same were purchased by them or by the second defendant. It has also come out in evidence that the first defendant has some source of income. Therefore, the first defendant being the resident of the house situated in plaint schedule Item No. 1 property till 2013 is presumed to be the owner of movable properties situated in the house. Apart from that there are no materials on record to substantiate the contention that the movables shown as Item No. 3 would fetch a value of ₹1,00,000. In such circumstances, the finding of the trial Court that the plaintiffs and defendants are entitled to get ₹25,000 as the value of plaint Item No.3 movables is incorrect.

**14.** Next question is whether the first defendant is entitled to get the value of improvements in respect of plaint schedule Item No.1 property. According to the first defendant he had renovated the house, reclaimed the low-lying land by filling sand and rock. He had also planted 260 rubber trees in the property with the consent of plaintiffs and second defendant and as such he is entitled to claim the value of improvements.

Ext.A8 is the reply notice issued by the first defendant to Ext.A7 airmail send by the plaintiffs. In the said reply notice it was specifically stated that the first defendant had made substantial improvements in the property with the consent of the other co-owners by spending more than Rs.20,00,000/- for reconstructing and renovating the residential house to its present condition and constructing the granite wall for the courtyard and cultivated the present rubber trees in the property which were already attained tapping aged. Therefore, his specific in the reply notice was that he is entitled to value of improvements at the time of partition. It is to be noted that when the plaint was filed, it was silent on the aspects of value of improvements claimed by D1 as per Ext.A8 reply notice. PW1 during cross examination admitted that she used to come to the plaint schedule property intermittently and had seen the reclamation of property using granite stones. In Ext.C1 commission report, the commissioner has also reported about the existence of 350 rubber trees in the property. During cross examination, PW1 stated that the said rubber trees were planted by D2. It is evident from her own evidence that D2 has been residing in USA from 1995. D2 has also no case that the said rubber trees were planted by him and he chose to remain

exparte. It is also seen from Ext.B4 release deed that D2 had already released his rights over the disputed proeprty herein in favour of the first defendant. The same contention put forward in the reply notice regarding value of improvements by D1 were reiterated in the written statement as well as in the proof affidavit in lieu of examination in chief of DW1. So it is seen that the first defendant has made a consistent and specific case regarding the value of improvements made by him throughout the proceedings. But no cross examination was made on that point controverting the averments regarding value of improvements in the said proof affidavit. The trial court as per judgment had found that the usufructus from the property were being taken by the mother and denied the share of profits over the property as claimed by the plaintiffs. The plaintiffs have not filed any cross appeal challenging that finding and hence the same has become final.

**15.** The law is settled that, ordinarily, a co-owner who effects improvements on the joint properties with his money, cannot expect to get back the money from the other co-owners. The reason is that if one co-owner were to be permitted to improve by spending money, he would saddle the

others with liability and, in some cases, he may even defeat the claim of the co-owners .

**16.** As pointed out above, law does not favour a co-owner who effects improvements on his own accord without the consent of the other co-owners to get any compensation from the other co-owners when they claim their share by partition. A co-owner, however, can compel the other co-owners to contribute to the expenses of improvements in the following cases viz. (a) if there is an express contract for such contribution; or (b) if the money was spent on the express or implied request of other co - owners; or (c) if he comes under S.70 of the Indian Contract Act and the same is made out. (Vide: **Narendranath v. Jnanendranath, 1953 (8) DLR Cal 27; See AIR 1940 Pat 324 (FB) and AIR 1957 Mad 86**).

**17.** In the instant case, the evidence on record discloses that plaintiffs intermittently visited the plaint schedule property and had seen the improvements effected therein. Plaintiffs were fully aware that the property remained undivided. Even then, they never raised any objection for making any improvements. The plaintiffs have no case that either them or the second defendant or their parents have made the improvements as

claimed by the first defendant and reported by the advocate commissioner in Ext.C1 report. It is further clear that first defendant was residing in the house situated in the property and he was running a rubber thread factory. Hence, it appears that it is the first defendant who had made improvements in the property using his funds. In such circumstances, equity requires that the improvements made by the first defendant should be honoured and the other sharers are legally bound to compensate the same for the reasons discussed above. In that view, the trial court was not justified in rejecting contribution by the plaintiffs and D2 for the improvements made by the first defendant. To the extent of matters as discussed above, the appeal is entitled to succeed.

**18.** The Commissioner, as per Ext.C1 report has reported that several valuable standing trees are present in plaint schedule property. As the property is in the joint possession and enjoyment of the parties, the first defendant is not liable to cut and remove the trees standing in plaint schedule Item No.1 property or to commit any waste therein till culmination of the proceedings. Point No.1 is answered accordingly and additional

issue numbers 6 and 7 are found in favour of the first defendant.

**19. Point No.2:-** After examining the materials on record, I am of the view that the trial court was correct in passing a preliminary decree for partition in favour of the plaintiffs except with respect to plaint schedule Item No.3 property. While conforming the judgment and decree for partition and possession of 1/3<sup>rd</sup> share in the plaint schedule property except Item No.2 & 3 in favour of the plaintiff, it is found that first defendant is entitled to share of profits in respect of the improvements made by him in the plaint schedule item no.1 property, the value to be determined during final decree proceedings. The trial Court has considered all the rest of material aspects pertaining to the claim of plaintiff and came to a correct conclusion, except as referred above. Point No.2 is answered accordingly.

**In the result,**

1. The appeal is allowed in part. The judgment and decree passed by the trial Court is set aside in respect to finding regarding plaint schedule Item No. 3 property which is found not partible.



2. The first defendant is entitled to get share of profits for the value of improvements made by him in the plaint schedule item No.1 property and the value of the same will be determined during final decree proceedings.
3. The costs of the proceedings shall come out of the estate.

*Dictated to the Confidential Assistant, typed by her, corrected and pronounced by me in open Court this the 26<sup>th</sup> day of March, 2026.*

Sd/-  
Ranjith Krishnan N.,  
Addl. District Judge-V, Kottayam

**APPENDIX : NIL**

Id/-  
Addl. District Judge-V, Kottayam

//True Copy//

Sd/-  
Ranjith Krishnan N.,  
Addl. District Judge-V, Kottayam