

IN THE COURT OF THE MUNSIFF OF TIRUR

PRESENT: Sri. JANKISH NARAYANAN, B.Com., LL.B., LL.M., MUNSIFF

Thursday, the 31st day of October, 2019
the 9th day of Karthika, 1941

ORIGINAL SUIT No. 169 OF 2018

Between:

Chakkaliparambil Koya's children,

1. Naseera, 30 Years, W/o. Muhammed Shabeerali.

2. Shareefa, 23 Years, W/o. Muhammedali.

Naduvattom amsom, Kolathur desom, Tirur Taluk.

} Plaintiffs

And:

Musthafa, 22 Years, S/o. Chakkaliparambil Koya,

Naduvattom amsom, Kolathur desom, Tirur Taluk.

} Defendant

This suit coming on 28-10-2019 for final hearing before me in the presence of Sri. V. Chandrasekharan and Sri. K. Vipin, Advocates for plaintiffs and the defendant called absent and set exparte and having stood over to this day for consideration, the court delivered the following;

J U D G M E N T

The suit is one for partition

2. The plaint averments, in brief, are as follows:- Plaint A schedule property is the genealogical table showing the relationship between the plaintiffs and defendant. Plaint B schedule property originally belonged to the father of plaintiffs and defendant by name Chakkaliparambil Koya by virtue of document No. 1485/1998 of SRO Kuttipuram. Plaint C schedule property also belonged to said Koya by virtue of document No. 1356/1991 of SRO Kuttipuram. Plaint D schedule property belonged to said Koya by virtue of document No. 1234/1999 of SRO Kuttipuram. The house situates in the C schedule property has been constructed by said Koya by utilizing his own funds. Koya died. On the death of said Koya, plaint B, C, and D schedule properties devolved upon the plaintiffs, the defendant, his another son Abdul Nazar and wife Fathima. Fathima died. Her legal heirs are the plaintiffs, defendant and said Abdul Nazar. Abdul Nazar was unmarried. He has no issues. On the death of said

Abdul Nazar, his share in the B, C and D schedule properties devolved upon the plaintiffs and the defendant. An old house is situated in the 'C' schedule property. One more house is also in the C schedule property which was constructed by utilizing the income derived from the property. The newly constructed house in the C schedule property is partible. The plaintiffs are entitled to get $\frac{1}{4}$ share each in the B, C and D schedule properties. Defendant is entitled to get $\frac{2}{4}$ share in the property. The defendant did not heed to the request of the plaintiffs for partition. Hence the suit.

3. The defendant opted to remain *ex parte*.

4. Points that arise for consideration:-

1. Whether the B, C and D schedule properties are partible ?
2. Whether the plaintiff is entitled to get any share as stated in the plaint?
3. Order as to costs ?

5. Plaintiff filed proof affidavit in lieu of her examination in chief. Exbt. A1 to A4 are marked on the side of the plaintiff. .

6. Heard the counsels for the plaintiff

7. **Points No. I to III:-** These points are interconnected, and therefore discussed together. B schedule property originally belonged to the father of the plaintiffs and defendant by name Chakkaliparambil Koya by virtue of Exbt A2 document. C schedule property belonged to said Koya vide Exbt A1 document. D schedule property also belonged to said Koya by virtue of Ex. A3 document. The house situated in the C schedule property has been constructed by said Koya by utilizing his own funds. Koya died. His legal heirs are plaintiffs, defendant, his son Abdul Nazar, and wife Fathima. Fathima died. Her share in the property devolved upon the plaintiffs, defendant and said Abdul Nazar. Abdul Nazar was unmarried. He has no issues. Abdul Nazar also died. His legal heirs are the plaintiffs and the defendant. The plaintiffs are entitled to get $\frac{1}{4}$ share each in the B, C and D schedule properties. Since the defendant remained *ex parte*, the evidence adduced by the plaintiffs remained unchallenged. I find no reason to disbelieve PW1.

Therefore, I am satisfied that the plaintiffs have proved their case by adducing cogent and reliable evidence. Hence the plaintiffs are entitled to get a decree as prayed for.

In the result, the suit is decreed and a preliminary decree for partition is passed as follows:-

- I. The plaint B, C and D schedule properties shall be divided into 4 equal shares by metes and bounds.
- II. The plaintiffs No. 1 and 2 are entitled to get $\frac{1}{4}$ shares, each in the plaint B, C and D schedule properties.
- III. The defendant is entitled to get $\frac{2}{4}$ shares in the plaint B, C and D schedule properties.
- IV. The allotment of the shares as shown above to the defendant shall be subject to the payment of court fee.
- V. The costs of the suit shall come out of the estate.
- VI. The suit is adjourned sine die.

(Dictated to the Confidential Assistant, transcribed by her, corrected by me and pronounced in open court, this the 31st day of October, 2019.)

Sd/-
MUNSIFF.

Appendix:

Plaintiff's witness:

PW1 : Naseera.

Plaintiff's Exhibits:

- A1. 03-06-1991 Certified Copy of Partition Deed, No.1356/1991.
- A2. 21-07-1998 Certified Copy of Hjenm Assignment Deed, No.1485/1998.
- A3. 20-05-1999 Certified Copy of Jenm Assignment Deed, No.1234/1999.
- A4. 10-04-2018 Copy of Lawyer Notice.

Sd/-
MUNSIFF.

/True Copy/

MUNSIFF.

Typed by : T.Sajeesh

Compared by : 1.

2.

Copy of/Fair Judgment
in OS.169/2018, Dated.31-10-2019
