

IN THE COURT OF THE MUNSIFF OF PARAPPANANGADI

Present:- Haridasan.E.N, Munsiff

Thursday, the 30th day of September, 2021
the 8th day of Aswina, 1943

ORIGINAL SUIT NO: 331 OF 2016

Between:-

Chakkumpara Pootheri Bushra, 39 years,
D/o. Palamadathil Cholakkal Biran @ Beeran,
Karuvanthuruthi Village, Nalloor desom,
Post Ferok, Kozhikode Taluk.

Plaintiff

And:-

1. Kolathoor Mattil Pathumma, 87 years,
W/o. Palamadathil Cholakkal Beeran.
2. Palamadathil Cholakkal Ali, 66 years.
S/o. Palamadathil Cholakkal Beeran.
Kundil Para
Both are residing at:-
Kommangadu Road, Kuttoor North Post,
Peruvalloor amsom and desom, Pin: 676305,
Tirurangadi Taluk.
3. Palamadathil Cholakkal Muhammed, 64 years,
S/o. Late Assankutty, Nechikkottu Parambu.
Pallimukku, Ozhukoor Post, Pin: 673642,
Tirurangadi Taluk, Ozhukoor amsom, desom.
4. Palamadathil Cholakkal Assain, 58 years,
S/o. Palamadathil Cholakkal Muhammed,
Kommangadu Road, Kundil Para,
Kuttoor North Post, Pin: 676305,

Defendants

5. Palamdathail Cholakkal Muhammed Shereef,
 53 years, S/o. Palamadathil Cholakkal Muhammed
 Kommangadu Road, Kundil para,
 Kuttoor North Post, Pin: 676 305,
Defendants no. 4 and 5 are residing at:-

Abdurehiman Nager amsom and desom,
 Tirurangadi taluk.

Defendants

This suit is coming on 30-06-2018 and 23-09-2021 for hearing before me in the presence of Sri P.P. Basheer, Advocate for the plaintiff and name of the defendants called absent and set exparte and having stood over this day for consideration and the court delivered the following:

JUDGMENT

The suit is for partition.

2. The plaint averments, in brief, is as follows:

Item number 1 of the plaint schedule property was obtained by one Beeran kutty as per partition deed number 1478 of 1924. The said Beerankutty is the grandfather of Cholakkal Beeran, who is the father of the plaintiff. After the death of the said Beeran kutty, the item number 1 of the plaint schedule property was devolved upon his children Avarankutty, Pathummakutty, Kathiyumma, Alikathiyumma, Aassankutty and Muhammed. Later Muhammed Conveyed his right in the plaint item number 1 property to Hassankutty. After the death of the said Hassankutty his right on the plaint item number 1 property was devolved upon Beeran, his brother Muhammed and their mother Unnimma. Later the said property and the other properties were partitioned as per the partition deed number 37/1969, in which item number 5 is the above said property of Beeran, Muhammed and their mother Unnimma. The said Unnimma was died in the year 1989 and her share in the said property was devolved up on the said Beeran and Muhammed. Beeran is the father of the plaintiff, who has right of 3 ½ shares and 1/8 shares of his deceased mother on the said property. Hence the said Beeran had a right to get 4/8 shares of the said property which includes 1/8 share of the deceased mother. The first defendant is the first wife of the father of the plaintiff and

second defendant is her son. The shares of Muhammed were obtained by the first and second defendant as per deed number 2883/1989. As per the settlement deed number 2445/2016 the shares of the deceased Beeran were obtained by the plaintiff so the plaintiff is entitled to get 4/8 shares of the plaint item number 1. Though the plaintiff demanded several times for partitioning the plaint item number 1 and allot her shares, the defendants were not ready for the same. On 12/08/2016 the plaintiff issued a lawyer notice by the registered post to the defendant which was accepted by the 3rd defendant and refused to accept by the first and second defendants. 3rd defendant has not given any replay for the same so far.

3. Plaint item number 2 were obtained by the above said Beeran as per partition deed numbers 1756/1924 and 1478/1924 SRO, Tirurangadi. After the death of the said Beeran the said property was devolved on his legal heirs Avaran kutty, Pathumma kutty, Kathiyumma, AliKathiyumma, Assankutty and Muhammed. Later Kathiyumma was died and her share of the property was vested with her children Muhammed kutty, Beeran kutty, Mammed, Mariyakutty, Sainaba and Beeyathumma. After the death of the above said Alikathiyumma, her share of the property was vested with her children Ahammed, Kunhiumma and pathumma. After the death of the above said Assankutty, his share of the property was devolved upon Beeran, Muhammed and his wife Unnimma. After the death of the said Muhammed, his share of the property was devolved upon defendants number 4 and 5 and the said property was partitioned as per the partition deed number 37 of 1964. Thereafter the shares of the above said Avarankutty pathummakutty, Muhammedkutty, Beeran kutty, Mammed, Mariyakutty, Sainaba, Biyathumma, Kunholi Ahammed, Kunchi Umma, Pathumma, Saithu Muhammed, and Unnimma were allotted as per the partition deed number 1354/1993. Though the name of Beeran was also there in the said partition deed number 1354/1993, he has not signed in the partition deed nor he was present at the office of the Registrar for registration of the same and hence the above said partition deed number 1354/1993 is not binding on the above said Beeran. The above said Beeran is

the father of the plaintiff. The plaintiff's father Beeran was entitled to get 1/9 shares and the defendants number 4 and 5 are entitled to get the remaining the shares. As per the settlement deed number 2053/2016 of SRO, Vengara the plaintiff obtained the above said 1/9 undivided shares of her father in the plaint item number 2 property. The defendants were not ready to allot the said shares of plaint item number 2 to the plaintiff despite several request made. The plaintiff is entitled to get 4/8 shares in the plaint item number 1 property and 1/9 share in the plaint item number 2 property. Hence the suit.

4. Summons were duly served on the defendants. The defendants 1 and 2 appeared through their counsel but no written statement filed, other defendants remained exparte. Plaintiff was examined as PW1, Exhibit A1 to A13 were marked.

5. The suit is an undisputed one. As per the evidence adduced by PW1 and Exhibit A1 to A13 documents which stands unchallenged the plaintiff's case is proved and hence the plaintiff is entitled to get a decree as prayed for.

In the result preliminary decree is passed as follows:-

- a) The plaint schedule item number 1 shall be divided into 8 equal shares.
- b) The plaintiff shall be allotted 4 out of 8 such shares.
- c) The plaint schedule item number 2 shall be divided into 9 equal shares.
- d) The plaintiff shall be allotted 1 out of 9 such shares.
- e) Shares of plaintiff and defendants shall be allotted separately.
- f) The share of defendant shall be separated on payment of necessary court fee.
- g) Any one of the parties may apply for passing a final decree.
- h) Costs shall come out from the estate
- i) The suit is adjourned sine die.

(Dictated to the confidential assistant, transcribed by her, corrected and pronounced by me in open court, this the 30th day of September, 2021)

MUNSIFF

APPENDIX:-Witness examined for plaintiff:-

PW1: Bushara Palamadathil

Exhibits marked for Plaintiff:

A1: 18-05-1924 : Certified copy of partition deed No. 1756/1924.

A2: 18-05-1924: Certified copy of Partition deed No 1478/1924

A3: 07-01-1967: Certified copy of Partition deed No 37/1964

A4: 18-05-1993: Certified copy of Partition deed No 2144/1993.

A5: 18-05-1993: Certified copy of Avakashatheeradharam No 37/1964

A6: 23-05-2016: Settlement deed No. 2445/2016

A7: 23-05-2016: Settlement Deed No. 2053/2016.

A8: 12-08-2016: Copy of lawyer notice with acknowledgment card and receipt

A9:12-08-2016: Copy of reply notice

A10: 12-08-2016: Copy of reply notice

A11: 04-10-2016: Copy of lawyer notice with acknowledgment card and receipt

A12: 04-10-2016: Copy of reply notice.

A13: 04-10-2016: Copy of reply notice.

Witness examined for Defendant:-Nil

Exhibits marked for Defendant :- Nil

Court exhibit : Nil

sd/-
MUNSIFF

/True Copy/

MUNSIFF

Typed by: Seena

Compared by:1.

Copy of fair Judgment in
OS.331/2016
Dated: 30-09-2021.