

IN THE COURT OF THE MUNSIFF OF OTTAPALAM

Present:- Sri.M.R. Dileep, Munsiff, Ottapalam

Monday 18th day of November, 2024

27th day of Karthika, 1946. S.E.

ORIGINAL SUIT NO.12 /2020.

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| <ol style="list-style-type: none">1. Bindhu, aged 42 years, W/o. Late Achuthadas @ Babu, Puthanveetil, Thanikunnu Amsom, Pookkottukavu Desom, Kadampur.P.O., Ottapalam Taluk.2. Shruthi, aged 21 years, D/o Late Achuthadas @ Babu, Puthanveetil, Thanikunnu Amsom, Pookkottukavu Desom, Kadampur.P.O., Ottapalam Taluk. | } | Plaintiffs |
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-Vs-

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| <ol style="list-style-type: none">1. Sreekala, aged 51 years, D/o. Late Chandran Nair, Pappinicode Puthan veetil, Kothakurussi Amsom, Desom, Panamanna.P.O., Ottapalam Taluk.2. Madhavadas, aged 48 years, S/o. Late Chandran Nair, Pappinicode Puthan veetil, Kothakurussi Amsom, Desom, Panamanna.P.O., Ottapalam Taluk.3. Krishnadas, aged 46 years, S/o. Late Chandran Nair, Pappinicode Puthan veetil, Kothakurussi Amsom, Desom, Panamanna.P.O., Ottapalam Taluk.4. Sreelekha, aged 43 years, D/o. Late Chandran Nair, Pappinicode Puthan veetil, Kothakurussi Amsom, Desom, Panamanna.P.O., Ottapalam Taluk.5. Rathnakumari, aged 72 years, W/o. Late Chandran Nair, Pappinicode Puthan veetil, Kothakurussi Amsom, Desom, Panamanna.P.O., Ottapalam Taluk. | } | Defendants |
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This suit coming on this day for final hearing before me in the presence of Sri. Manoj. P.Menon, Advocate for the plaintiffs, and Sri.Ramdas, Advocate for D1, D2 & D5, and D3 and D4 are not entered in appearance, and this court passed the following:-

JUDGMENT

This is a suit for partition.

2. The plaintiffs' case, in brief, is as follows:-

The plaintiffs and defendants belong to the Nair community and are governed by the Hindu Succession Act. The plaint B schedule property was sold to the 5th defendant and her husband Chandran Nair by deed no.2992/1994 of the Cherpulassery sub registrar's office. The 1st plaintiff was the wife of Achuthadas, who was the son of Chandran Nair and the 5th defendant and the brother of defendant nos. 1 to 4. The 2nd plaintiff is the daughter of Achuthadas and the 1st plaintiff. Achuthadas died in 2004, and Chandran Nair died 2 years after the death of Achuthadas. On Chandran Nair's death, his interest in the plaint B property devolved on the plaintiffs and defendants. The plaintiffs have a one-twelfth interest in the plaint B schedule property, and defendant nos. 1 to 4 have a one-twelfths interest in it. The 5th defendant has a seven-twelfths interest in the plaint B schedule property. One year ago, the defendants stopped giving the plaintiffs their share of the profits from the plaint B schedule property. Moreover, they are trying to sell the trees standing on the property. Hence, this suit.

3. The 1st plaintiff remarried 6 years after Achuthadas's death, but the remarriage has not affected her interest in the plaint B schedule property. The annual profits from the plaint B schedule property are ₹ 30,000. The defendants should be ordered to pay the plaintiffs their share of the future profits from the plaint B schedule property.

4. Defendant no.4 was served with a summons, but she did not come to court to defend the suit. The 3rd defendant appeared in court through counsel, but he did not file a written statement or attend court on the day fixed for the trial of the case. Therefore, the suit was heard in the absence of defendant nos. 3 and 4.

5. Defendant nos. 1,2 and 5 filed a written statement. Their contentions are as follows :-

The plaintiffs are not entitled to any relief. The suit is not maintainable. The plaintiffs had abandoned Achuthadas a long time before his death. The 1st plaintiff has remarried and is living with her new husband in Coimbatore . The plaintiffs have never demanded a partition of the property by metes and bounds. The plaint B schedule property does not generate any profits. The plaintiffs do not have a cause of action, and the suit is liable to be dismissed with costs.

6. The following issues were framed for trial:-

- 1) Whether the plaint B schedule property is partible, and if so, what are the shares of the parties ?
- 2) Share of profits ,relief and costs?

7. The plaintiffs did not adduce any oral evidence, and the documents submitted in evidence by them were marked as Exts.A1 to A3. The defendants did not adduce any evidence .

8. Heard the plaintiffs' counsel and the counsel for the defendants.

9. Issue no.1 : Ext.A1 is a certified copy of the sale deed in favour of the 5th defendant and her husband. Ext.A2 is the 2nd plaintiff's birth certificate, and Ext. A3 is Achuthadas's death certificate. The partibility of property is not in dispute. Therefore, the first part of issue no.1 is answered in the affirmative . Defendant nos.1,2 and 5 do not deny that the plaintiffs have a one-twelfth interest in the plaint B schedule property. The answer to the second part of issue no.1 is that the plaintiffs together have a one-twelfth interest, defendant nos. 1 to 4 have a one-twelfth interest each and the 5th defendant has a seven-twelfths interest in the plaint B schedule property .

10. Issue No.2 :- The enquiry regarding profits shall be relegated to the final decree stage. In view of the answer to the 1st issue, a preliminary decree is passed in the following terms :-

1. The plaint B schedule property shall be divided into 12 equal shares and one such share shall be allotted to the plaintiffs.
2. Defendant nos. 1 to 4 shall be allotted one share each if they pay the requisite court fee.
3. Defendant no.5 shall be allotted seven shares if she pays the requisite court fee.
4. The division of the property by metes and bounds shall be carried out in the final decree stage.
5. The inquiry regarding profits is relegated to the final decree stage.
6. The costs of the suit shall come out of the estate.

Dictated to the Confidential Assistant, transcribed by her, corrected and pronounced by me in the open court, on this, the 18th day of November , 2024.

Munsiff

APPENDIX:

Plaintiffs' Witness Examined: NIL

Plaintiffs' Exhibits Marked:

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| A1 | : | 20.07.1994 | : | Certified copy of Jenm assignment deed No.2992/94.
SRO, Cherpulassery. |
| A2 | : | 16.08.2010 | : | Copy of Birth certificate of 2 nd plaintiff. |
| A3 | : | 19.01.2010 | : | Copy of Death certificate of Achuthadas. |

Munsiff