IN THE COURT OF THE MUNSIFF OF CHITTUR

Present :- Smt.Shiny.M.S., Munsiff, Chittur
Monday the 16th day of March, 2026
25th day of Phalguna, 1947 S.E.

ORIGINAL SUIT No: 226/2014

1 Krishnan, (Died) aged 65 years, : Plaintiffs
S/o.Pazhanan, Athimani,
Vandithavalam Village, Chittur Taluk

Supplemental Plaintiffs 2 to 5

2 Meenakshi, W/o.A.P.Krishnan,
Athimani, Vandithavalam Village,
Chittur Taluk

3 Dhanesh, aged 35 years,
S/o.A.P.Krishnan, Athimani,
Vandithavalam Village, Chittur Taluk

4 Mahesh, aged 32 years,
S/o.A.P.Krishnan, Athimani,
Vandithavalam Village, Chittur Taluk

5 Nisha.A.K, aged 28 years,
D/o.A.P.Krishnan, Athimani,
Vandithavalam Village, Chittur Taluk
(Supplemental Plaintiffs No.2 to 5 impleaded and
Amended as per order in I.A.No.2109/2019
I.A.No.2106/2019 dated: 12/12/2019)

Vs.

1 Syamala, aged 36 years, : Defendants
W/o.Chandran, Athimani,
Vandithavalam Village, Chittur Taluk

2 Chandran, aged about 39 years, : Defendants
H/o. Syamala, Athimani,
Vandithavalam Village, Chittur Taluk

3 Divya, aged 20 years,
D/o. Syamala and Chandran,
Athimani, Vandithavalam Village,
Chittur Taluk

4 Dhanya, aged 18 years,
D/o. Syamala and Chandran,
Athimani, Vandithavalam Village, Chittur Taluk

This suit is coming on 05.03.2026 for final hearing before me in the presence of Sri.P.Govindhanunni, Advocate for the Supplemental 2nd to 5th plaintiffs, 1st plaintiff reported no more and of Sri.K.Mohandas and Smt.Chithra.N, Advocates for the Defendants and having stood over to this day for consideration and the court delivered the following:-

J U D G M E N T

The suit is one for eviction and mean profits.

2. The plaint averments in brief are as follows:- The plaint schedule properties belonged to the plaintiff as per Document No. 2143/2012, S.R.O., Chittur and is in his absolute possession and he is paying tax to the properties, except the plaintiff none others have any right over the properties. These properties are shown as the plaint 'A' schedule properties. From the plaint schedule properties, a portion is allotted to his son by the plaintiff as per Document No. 3693/2012 of S.R.O., Chittur and that property is shown as the plaint 'B' schedule properties. The remaining properties left after the assignment is shown as 'C' schedule properties. The plaintiff’s

sister’s daughter who is the first defendant and her family was permitted to occupy a portion of ‘C’ schedule properties to reside in the year 2007. That portion is shown as 'D' schedule properties. That property is in the possession of the defendant No. 1 as a licensee, without any rent and permitted on humanitarian consideration for the educational purpose of her children. They had constructed a temporary shed in the 'D' schedule properties. The first defendant is having right over her father’s 80 cents of her father’s property at Kambrathchalla. The second defendant is having one acre cultivating land at Olavakkode. Plaintiff demanded to vacate the 'D' schedule properties directly and through mediators. But the defendant was not willing so the suit is filed. The defendants shall vacate within a specific time and the plaintiff is entitled to mesne profits from the date of filing of the suit. From the date of demand till vacating the premises the defendant is to be considered as the trespassers. So from that date onwards they are entitled to rent at the rate of ₹100/- per month.

3. The defendant appeared and filed a written statement. The contentions in the written statement in brief are as follows:- The contention that the plaint schedule property absolutely belongs to the plaintiff and a portion of the property is allotted to the defendant are all incorrect. All the averments regarding the allotment of the property as licensee to the defendant is also incorrect. Cause of action shown is not correct. The true facts are as follows:- The plaint schedule properties belonged to the grandmother of the first defendant and the mother of the plaintiff, Thatha, as per Document No. 401/1977. During her lifetime itself, she had executed a will dated 21.03.1976 in favour of Chami, Krishnan, Daivani, Ammini and the children of

Daivani, Shobana Shyamala. After her death, the property devolved upon the said people. As the sharer in the Will, this defendant is in possession and had constructed a shed in the 'D' schedule properties and are residing there. After the death of the defendant's father, their mother Daivani remarried and the plaintiffs and the other brothers of their mother supported the first defendant and her sister for their livelihood. After the marriage of the first defendant they had no other house to live in and so the defendant constructed a shed in the plaint schedule properties with the consent of plaintiff and other heirs as per the partition deed. Thus the five cents of properties were partitioned in her favour and the defendant had started residing there for the last fifteen years without any obstruction. The five cents of properties and the shed absolutely belongs to the defendant, as per the oral partition deed and she had constructed a fence around it which would define it clearly from the other properties and is in her absolute possession. The attempt of the plaintiff is to obstruct the the residence of the defendant. The defendant is having 1/6 share over the property. If it is found that the plaintiff is having absolute right over the property, then also his claim is barred by adverse possession and limitation as she is residing there for last 15 years without any obstruction. So she is not entitled to the relief claimed for. Suit has to be dismissed.

4. Based on the above averments, the following issues arose for consideration:-

(1) Whether the valuation shown in the plaint and the court fee paid are correct?

(2) Whether the plaintiff has title over the plaint 'D' schedule properties as claimed for?

(3) If so, whether the said right is lost by adverse possession and limitation as claimed for?

(4) Whether the plaintiff is entitled to recovery of possession of plaint 'D' schedule from the defendants as claimed for?

(5) Whether the defendants are the licensees in the plaint 'D' schedule properties under the plaintiff, as claimed by him ?

(6) Reliefs and costs ?

Additional Issue:-

(1) Whether Thatha validly executed a Will in favour of defendants and their children on 21-03-1976 as claimed by defendants ?

5. Evidence in this case consists of the oral evidence of PW1 and DW1 to DW5 and Exhibit A1 to Exhibit A4 marked from the plaintiff's side and Exhibit B1 to Exhibit B4 marked from the defendant's side. Heard both sides.

6. Issue No. 1 to 5 and additional issue No.1: The definite contention of the plaintiff is that the plaint schedule properties absolutely belonged to him as per Exhibit A1 and by A2 document he had assigned a portion of the property to his son that is shown as 'B' schedule and the remaining properties a 5 cents of property was given to the defendant for their residence and they have constructed a shed there. Now the plaintiff demands back the possession of the property and he demanded vacating the properties that is shown as 'D' schedule. But the defendants were not willing and so he filed a suit for eviction as well as recovery of possession as well as for mesne profits.

7. The contention of the defendant is that the plaint schedule property actually belonged to their grandmother and the plaintiff’s mother Thatha and before her death

she had executed a will by which the property was allotted to the plaintiff's other brothers and also to them. After that they had effected an oral partition and by that 5 cents of property were allotted to them and there they have constructed the shed and started residing there and it is in their possession and they are having absolute right over the property and she also claims that if ever , it is found otherwise, the claim is barred by adverse possession and limitation, as she has been residing there for over 15 years.

8. PW1 is the supplemental third plaintiff. He gave evidence on behalf other plaintiffs as well as supplemental fourth and fifth defendants, in tune with averments in the plaint. According to him, all the averments in the written statement are false and denied. The Will mentioned in the written statement is forged. After their appearance in the suit, they have forged the fingerprint of the deceased witness and falsely made the Will. During the pendency of the suits, they have constructed an asbestos shed in the year 2021. The defendant is not having any right over the 'D' schedule properties. They possess the properties only as licensee. So the suit is to be decreed in their favour.

9. DW1 is none other than the second defendant. He gave evidence in tune with the averments in the written statement. DW2 and DW3 are the sons of the deceased witnesses and they identified their father's signature in the Will. DW5 is the Sub Registrar of Chittur S.R.O. He was confronted with Exhibit B1 document and he gave evidence that the certified copy of the document number 401/77 is issued from his office. It was submitted for registration in the year 1976 i.e. on 10.07.1976. But

there was a doubt regarding the stamp duty and so it was sent to the District Registrar for impounding. So it was registered only in the year 1977. The document is prepared on 30.01.1976.

10. Learned counsel for the plaintiff argued that there are 4 schedules of property and the suit is filed for recovery of possession of 'D' schedule property from that of the defendants, which is possessed by them as a licensee. Since the license is cancelled they are entitled for mean profits also. The Will relied upon by the defendant is forged. It could not be relied upon.

11. On the other hand, the defence counsel argued that they obtained the property as per the Will and later oral partition was effected and the property was divided among them and the 'D' schedule was allotted to them and they have absolute right and possession over the property. That the Will is a 30 year old document and has come from property custody, further poof has to be dispensed with. It is also argued that there is no valid notice for eviction which is mandatory and so the contentions of the plaintiffs has to be rejected and the suit has to be dismissed.

12. Firstly the question to be considered is whether a legal notice is mandatory before filing a suit for eviction of a licensee. Upon termination, licensees become trespassers which enable to entertain eviction suit. "There is no legal requirement for issuance of a notice under Section 106 of Transfer of Property Act before institution of eviction petition. Condition to that effect printed on back of rent receipt could not be said to be a conscious decision taken by parties governing lease of premises." **Jaswant Raj Soni VS Prakash Mal - 2005 6 Supreme 430.**

13. Now the evidence can be analysed. As far as the plaintiff is concerned, he adduced oral evidence that the property earlier belonged to his mother-in-law and after her death the legal heirs assigned their share to him as per the Exhibit A1 deed. Subsequently he settled a portion of properties in favour of his son and that is proved by Exhibit. A2 document. A3 and A4 documents are the tax receipts with respect to the properties. The oral evidence of PW1 and the Exhibit A1 to A4 document would prove that plaintiff has title over the property. He has also given oral evidence that he gave the property to the defendant No. 1 as a license. So the primary burden to prove the case of the plaintiff is proved by his oral and documentary evidence. Now the burden shifts to the defendant to prove that he has got absolute right and possession over the property. For that her pleadings can be looked into. First of all she is relying on a will. It is her contention that she has right over the property as per that will. Her second contention is that the presumption under Section 90 of Indian Evidence Act, 1872 is available in favour of the defendant with respect to the Will. However, document relied is a will. So the contention of the defendants needs to be examined carefully because a will stands on a different footing from ordinary documents. Under Section 90 of the Indian Evidence Act, 1872, when a document that is 30 years old is produced from proper custody, the court may presume that; the signature and handwriting of the person who purportedly signed it are genuine, the document was duly executed. However this presumption is Discretionary and not automatic. As regards a will is concerned, a will must be proved in the manner prescribed under Section 68 of the Indian Evidence Act, 1872, read with Section 63 of the Indian

Succession Act, 1925. These provisions require that at least one attesting witness must be examined to prove the execution of the will If such witness is alive and capable of giving evidence. Now as far as this case is concerned, the presumption under Section 90 cannot dispense with the mandatory proof required under Section 68. "As held by this Court in **Bharpur Singh vs. Shamsher Singh, 2009 (3) SCC 687,** a presumption regarding documents 30 years old does not apply to a will. A will has to be proved in terms of Section 63(c) of the Succession Act read with Section 68 of the Evidence Act." **Ashutosh Samanta (D) by LRs. VS S. M. Ranjan Bala Dasi - 2023 2 Supreme 649.** "wills cannot be proved only on the basis of their age – the presumption under Section 90 as to the regularity of documents more than 30 years of age is inapplicable when it comes to proof of wills, which have to be proved in terms of Sections **63(c) of the Succession Act, 1925, and Section 68 of the Evidence Act, 1872." Ashutosh Samanta (D) by LRs. VS S. M. Ranjan Bala Dasi - 2023 2 Supreme 649.** Going by these decisions, it can be seen that the presumption is not automatically available. As far as this case is concerned, the defence counsel argued that the attesting witnesses are no more and the document has come from proper custody. So the presumption under Section 90 is available. But as far as this case is concerned since it is a will it cannot be treated like an ordinary 30 year old document. So the evidence and the proof evidence should be subjected to strict scrutiny and the proof of attestation is essential. How far, the defendants have succeeded in it can be looked into.

14. In order to prove that the Exhibit B2 will, DW2, DW3 and DW4 were examined from her side. DW2 is the scribe. According to him, he wrote the will on 21.03.1976. Velan, Angalan and Thatha have signed in it. The fingerprint is that of Thatha, Velan, Angalan. Thatha came to his house and Thatha gave instructions. The witness signed in front of him. The contents of the will can be looked into. It is stated in the will that the property obtained to her as per the registered assignment deed and which is in her possession, which is in Survey No. 29/9, comprising 22.5 cents should devolve upon Chami, Krishnan, Daivani, Ammini and Shobana and Shyamala, who are the children of Daivani. The document was executed on 21.03.1976 and the witnesses are Velan son of Kalan and Angalan son of Ponnan. Firstly, the discrepancy pointed out by the defence counsel is that the plaint schedule property lies in Survey No. 91/1, old Survey No. 271. But the survey number mentioned in the will is Survey No. 29/9. So he argued that the he properties mentioned in the will is not with respect to the plaint schedule properties. He also took out a contention that the document was registered on 03.03.1977. So, on the date of execution of the will, the Thatha had no right over the property. However, this contention is negated by the argument raised by the defendant counsel that that document itself would show that it was presented for registration in the year 1976 itself. But due to the deficiency of stamp, it was , impounded and forwarded to Collector. That is proved from the endorsements in the Exhibit B1 document. However, no document is produced to prove that the properties mentioned in the will and that of the plaint schedule properties are one and the same. Now regarding the attestation, the two witnesses, attestors of the will are no more.

The first attestee to the will is Valen. His son is examined as DW3. According to him, his father died 20 years ago. He deposed that he had seen his father's signature. He used to write in Malayalam. He identified the signature of his father in Exhibit B2 will. The second attestee to the will is DW4. He is the son of Angalam. He also stated that he knows the signature of the father. His father writes in Malayalam and sign and he identified the signature of his father in Exhibit B2 document. In this case, the scribe is also examined. His evidence can be looked into. The evidence of the scribe is very crucial in this context where the attestors are no more. According to him, the will was written on 21.03.2017. He stated that the contentions of the will were dictated to him by the testator Thatha, who had come to his house and informed him about the matters to be incorporated in the will. He further deposed that the name of attesting witness were written by him and the witness only affixed their signature thereafter. The scribe admitted that he does not possess any scribing licence and that he had not written any will earlier except the present one. He also stated that there is a distance of about 10 kilometres to between his house and the house of the testator and according to him the testator used to come to his house for work. He also stated that he has not written any other will after the execution of this document. So in short in his life he had writtn only this will. With respect to the survey number mentioned in the will, the scribe stated that the testator had brought a piece of paper containing the details and that he copied the same while preparing the document. According to him, that paper had been given to the testator by the owner under whom the testator was working.

15. During cross-examination, when he was questioned regarding the manner in which documents are usually written, he stated that he had studied scribing for 2 years under Chandrasekhara Menon and had even attempted to obtain a scribe licence. When he was confronted with the question that ordinarily a margin or space has to be left in a document for affixing stamps and endorsements and why no such margin was left in the present document, he stated that it was his usual practice to write in such a manner. He also admitted that in the will certain portions of the writing appears above the thumb impression of the executant. When his notice was taken to his writing above the thumb impression he stated that it is his usual practice. He further admitted that on a perusal of document the first portion of the writing appears to be very closely written whereas towards the later portion there is comparatively more spacing between the lines. However he denied the suggestion that will was written on a signed blank paper.

16. On the perusal of the will it can be seen that the entire document is written without leaving any margin on the paper. Further the first portion of the writing appears to be closely written whereas towards the later portion of the alignment and spacing are noticeably different. This creates an impression that the contents were written on a paper which had already been signed. Actually the document does not contain any signature of the executant but only a thumb impression. Significantly even above the thumb impression portions of the writing can be seen. On a plain look at the document, it gives impression that the writing was made on a paper on which the thumb impression had already been affixed, which appears to be unusual and

create suspicion regarding the manner in which the document was prepared.

17. On appreciation of the evidence of the scribe along with the manner in which it is written, certain suspicious circumstances surrounding the execution of the will become evident. The scribe admittedly does not possess any scribing licence and he has not written any will earlier or later except the present one. Though he claims he studied scribing for about 2 years and even attempted to obtain a licence, the manner in which the document is written does not reflect the normal practice followed in the preparation of documents. The will is written without leaving any margin and the scribe has admitted that portions of the writing seen above are the thumb impressions of the executant. Generally the thumb impression would be affixed only after completion of writing. Presence of writing above the thumb impression therefore creates a doubt as to the manner in which the document was prepared. These circumstances, create suspicious surrounding the execution of the will. So, the propounder of the will is bound to remove the said suspicious circumstance by leading cogent and satisfactory evidence.

18. Moreover, in this case, it is relevant to note that the subsequent to the alleged execution of the will in the year 1976, a surrender deed was executed by Chami, Ammini, Daivani in favour of Krishnan, who is the plaintiff in the present case. In the said document, they have specifically stated that after the death of their father and mother, they had obtained 1/4 share over the property and they surrendered their respective shares in favour of the Krishnan.

19. The contention of the defendant, Shyamala, is that as per the will relied on by her, the property has been bequeathed to 6 persons namely Chami, Ammini, Daivani, Krishnan herself and her sister Shobana and that each of them was entitled to an equal share. According to her, after the execution of the will, an oral partition was effected among the 6 sharers and 5 cents of property was allotted to her. However, no evidence has been adduced to prove that alleged oral partition. Even the year in which such oral partition took place has not been stated. And if there had been such a will providing for division of the property into 6 shares, the same would naturally have been reflected in the surrender deed executed later. In fact the mother of defendant is also a party to the surrender deed. But in the said document there is no reference to the existence of any such will or to any prior partition based on the will.

20. These circumstances clearly indicates that even at the time of execution of the surrender deal the parties were proceeding on the basis that they had succeeded to the property by inheritance after the death of their parents. This would probabilise the conclusion that the parties had no knowledge of the will at any time. If really a will had existed in their favour and if an oral partition had been so effected as alleged all the parties concerned would certainly have been aware of the same and that would have been mentioned in the surrender deed. The absence of any such recital in the said document and the lack of any evidence regarding the alleged oral partition creates serious doubt regarding the very existence of will setup by the defendant.

21. In addition to that in her evidence the defendant had stated that it was the plaintiff who is her uncle who permitted her to put up a shed and reside in the

property. If as contented by her she had obtained 5 cents of property in a prior oral partition and was in possession of the same as of right there was no necessity for her to seek or obtain such a permission from the plaintiff. Her own admission that the plaintiff had asked her to put up a shed and reside there probabilised the case of the plaintiff that her occupation of the property was only with permission and not on the strength of any independent right.

22. Now another important circumstance in this case is that though there is a will in favour of Chami, Daivani, Krishnan, Ammini and Shobana and Shyamala, it is seen that in 2012 a document was executed by Chami, Ammini, Daivani in favour of Krishna. That document is executed in the year 2012. The document is produced and marked as Exhibit A1. In the document, it is stated that the property obtained to their mother-in-law as per Document No. 401/1977 and after the death of their father the property devolved upon them and they have assigned the 3/4 share in that property in favour of the Krishnan. Shobana and Shyamala, who are the defendants, are the daughter of this Daivani. Daivani is one of the executant of Exhibit A1 document. In that document, she herself had stated that after the death of their mother, the property devolved upon them and she had got 1/3 share over the property. And that is assigned to Krishnan. So if there is a will which is executed in the year 1976 itself and there is an oral partition as contented by the defendant, there would have mention about that in the document. That itself creates doubt. As per the will is to be divided into Divided in favour of Chami, Krishnan, Daivani, Ammini and Shobana and Shyamala then the property has to be divided into 6 shares. If so, the Shyamala would get only

3.6 cents of property. But now she is possessing 5 cents of property. So the oral partition as alleged by her is very essential to be proved in this case. With respect to that she has not adduced any evidence. She could only claim 3.6 properties as per the will. So that is also a very crucial aspect in this case. Hence, the contentions regarding oral partition could not be accepted.

23. It is admitted by the defendant that they themselves had constructed the shed. The plaintiff has no pleading that the defendants have taken profits from the property. Their only contention is that defendants have constructed shed and is residing. So for lack of sufficient pleadings I think mesne profits cannot be granted in this case. Another thing is that plaintiff has sought for removal of the shed. That can be allowed because both parties admitted that it is constructed by the defendant. So it shall be removed by the defendant at his own expense. If it is not done, an Amin shall be deputed to remove the shed at the expense of the respondent.

24. Now in this case the defendant had taken a plea of adverse possession and limitation. Adverse possession must be specifically pleaded and approved. Possession that started with the permission can never become adverse unless there is clear hostile assertion. The burden of proving adverse possession is upon the party who claims it. Under the principles embodied in the Indian Evidence Act Section 101 to 103, the burden is upon the defendant who claims adverse possession to prove it. A mere statement that he has been in possession from 2000 and that property is fenced is not sufficient. Defendant must prove the actual possession, open and hostile possession, hostile to the true owner and continuous possession for 12 years. This principle is

clearly laid down in a number of decisions. Here the defendant herself admitted in evidence that the plaintiff's uncle permitted her to put up a shed and reside there. So it can be treated as permissive possession. Permissive possession cannot become adverse unless the defendant shows a clear hostile denial of the plaintiff's title and that such a hostility continued after 12 years thereafter. No evidence is shown when the possession become adverse. No evidence is adduced to 12 years of hostile possession. The defendant has taken mutually destructive plea. She claims title through will or partition and also by adverse possession. That would weaken her plea of adverse possession. The defendant failed to prove the will and oral partition. The defendant admitted that the plaintiff permitted to reside in the property. Therefore, her possession is permissive. The plea of adverse possession and limitation is unsustainable and is liable to be rejected. The plaintiff proves his case by oral and documentary evidence. Except with respect to the claim of mesne profits, the suit stands proved and the suit is partly decreed . The issues are answered accordingly.

25. Issue No. 6 :- Plaintiffs and defendants are relatives. Considering the nature and circumstances of the case, parties shall bear their respective costs.

In the result, suit is partly decreed as follows:-

(1) The defendants are directed to vacate the plaint schedule property and surrender vacant possession of the same to the plaintiff within two months from the date of this decree.

(2) Defendants shall remove the shed constructed in the plaint schedule property within two months. In default, the plaintiff is at liberty to remove the shed through court with the assistance of an Amin at the

expense of defendants.

(3) The claim for mesne profits is dis allowed.

(4) The parties shall suffer their respective costs.

Dictated to the Confidential Assistant, transcribed by her, corrected and pronounced by me in open court on this the 16th day of March, 2026.

Sd/-
Munsiff.

Plaintiffs Witness Examined:

PW 1 : Dhanesh.A.K

Plaintiffs Exhibits:

A1	26-05-2012	:	Joint Released deed No.2143/2012 of SRO Chittur executed by Chamy and others in favour of Krishnan.
A2	27-09-2012	:	Certified copy of Settlement deed No.3693/2012 of SRO Chittur, executed by Krishnan in favour of Dhanesh
A3	31-10-2013	:	Basic Tax receipt issued by Village Officer, Vandithavalam in the name of Krishnan
A4	06--07-2012	:	Basic Tax receipt issued by Village Officer Vandithavalam in the name of Krishnan

Defendants Witness :

DW1 : Chandran

DW2 : Duraiswamy

DW3 : Kumaran

DW4 : Haridas

DW5 : Vinod Kumar.S

Defendants Exhibits:

B1	30.01.1976	:	Certified copy of Assignment Deed No.401/1977 of SRO Chittur.
B2	21.03.1976	:	Will
B3	05.01.2015	:	Ownership Certificate issued from Perumatty Grama Panchayat in the name of Chandran.
B4	05.01.2015	:	Cash receipt.

Sd/-
Munsiff.

/True copy/

Munsiff.

Typed by : Dhanya.P.V
Compared by : Dhanalakshmi

Fair / Copy of Judgment in
O.S.No.226/2014
Dated : 16.03.2026
