

IN THE COURT OF THE MUNSIFF OF ALATHUR
Present:- Sri.Binu.P., Munsiff, Alathur

Wednesday 29th day of October, 2025
(07th day of Karthika, 1947 S.E)

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ORIGINAL SUIT No. 10/2017

Sundaran, aged 62 years, Pensioner, S/o late Ayyankutty,
residing at Prambath House, Padur Post, Kavassery II
Village, Alathur Taluk. } Plaintiff

Vs.

1. Surendran, aged 47 years, Agriculture, S/o late Ayyankutty,
residing at Santhi Nivas, Padur Post, Kavassery II Village,
Alathur Taluk
2. Santhakumari, aged 50 years, W/o Gopalan, Swastham,
residing at Santhi Nivas, Padur Post, Kavassery II Village,
Alathur Taluk } Defendants

This suit is coming on 28th day of October, 2025 for final hearing before me in the presence of Sri.N.R. Venkitanarayanan Advocate for the plaintiff and of Sri. V.B. Vikas Advocate for defendant No. 1 and P. Vijayaraghavan Advocate for defendant No. 2 and having stood over to this day for consideration this Court delivered the following.

J U D G M E N T

Suit for partition.

2. Plaintiff averments in short are as follows:-

The plaintiff and the defendants are the legal heirs of late Ayyankutty and late Thanka. During the life time of Thanka, she gifted 37 Cents of property to the plaintiff by virtue of a gift deed No.2352/1993 of SRO, Alathur. The

plaintiff constructed a house in the property and is living with his family. The plaintiff's father acquired some properties as per deed No.817/1974 and 819/1974 to one Kuttikrishnan Nair, who later, relinquished his right as per deed No.239/1979 of SRO, Alathur in favour of Ayyankutty. Ayyankutty acquired some other properties by virtue of oral verumpattom lease from the jenmi Poomullimana. After the demise of Ayyankutty and Thanka, the properties devolved upon the plaintiff and the defendants. The properties are in the joint right, title and possession of the plaintiff and the defendants. Thus the plaintiff sent a legal notice to the first defendant, in turn the defendant sent a reply notice claiming that deceased Thanka during her lifetime executed a Will. The plaintiff submit that deceased Thanka was laid up, lost her memories, hearing and vision and was not able to distinguish things preceding one year of her death. The alleged Will is a false and concocted document and late Thanka had no independent right over the properties mentioned in the reply notice. The plaintiff is having 1/3 right over the plaint schedule properties. Hence the suit.

3. The first defendant filed written statement with the following contentions :-

The first defendant denied all the allegation in the plaint except those which are specifically admitted. It is contended that Santhakumari and Thanka relinquished their right over item Nos.1, 2, 3, 10 and 11 comprised in re-survey Nos.73/13 (0.1500 Hectares), 68/1 (0.1600 Hectares), 110/5 (0.0885 Hectares), 80/2 (0.0900 Hectares), 80/1 (0.0263 Hectares) as per the deed No.3061/1996 of SRO, Alathur in favour of the first defendant. Thereby he obtained the possession over the said properties for the last 20 years and enjoying the same. The plaint schedule item Nos.4 to 9 schedule properties belonged to Thanka as per deed No.820/1974 of SRO, Alathur comprised in survey No.1145/74, 223/76, 1385/85 and obtained verumpattam from Kannambra Velayudhan Chettiyar, with

respect to the property comprised in re-survey Nos.104/3, 116/8, 172/8, 172/9. The property comprised in re-survey No.113/20 obtained as verumpattom from Kadampidi Kunhikelan and property comprised in 113/21 obtained as verumpattom from Nadakkavil Kanduappan. Thanka executed a Will bearing 91/1996 of SRO, Alathur with respect to the said property in favour of the defendant. After the demise of Thanka plaintiff schedule item Nos.4 to 9 devolved upon the first defendant. Thereafter, mutation was effected in his favour and enjoying the property and obtained possession certificate. Property of Ayyankutty comprised in re-survey No.68/1 having extent of 0.3345 Hectare also in the possession of the defendant by virtue of relinquishment deed No.3085/1993 of SRO, Alathur executed by Thanka and Santhakumari. The plaintiff attempted to encroach upon the property of the first defendant having extent of 64 Cents adjacent to the property assigned to the plaintiff by Thanka. And the plaintiff obstructed the fixation of boundary. The defendant questioned the obstruction in vengeance to the same legal notice was issued. The plaintiff schedule item Nos.4 to 9 properties are not partible. There are two houses in the item No.10 property. Tharwad house renovated and maintained by the defendant. On the southern portion of the property this defendant constructed a new RC house and he is having equity right over the said property and he is paying the building tax. This defendant is having 3/4 share over the plaintiff schedule item No.1, 2, 10 and 11 properties. The plaintiff schedule item No.3 property is the part and parcel of the item No.10. For the said reasons the suit is to be dismissed with costs.

4. The second respondent filed written statement with the following contentions :-

This defendant also denied all the allegations except those which are specifically admitted. The plaintiff and the defendants are the children of the couple Ayyankutty and Thanka. The plaintiff schedule properties have not been

partitioned and are to be partitioned. This defendant is having 1/3 share upon the plaint schedule properties. The averment of execution of relinquishment deed Nos.3061/1996 and 221/1993 of SRO, Alathur pertaining to plaint schedule item Nos. 1 to 3, 10 and 11 properties by her mother is false and baseless. This defendant or her mother Thanka have not signed in any relinquishment deeds and the defendant also denied her and her mothers signature seen on the said deeds. The first defendant falsely created the deeds in order to prevent this defendant from getting her share. The contention of the first defendant that mother had executed a Will No.91/1996 of SRO, Alathur pertaining to plaint schedule item Nos.4 to 9 properties in favour of the first defendant and that the first defendant is in possession of the same is false. No Will has been executed by their mother pertaining to the properties. Mother was laid up due to Parkinson's disease since 1990 and also suffering from memory loss, physical and mental disability. The first defendant created the Will No.91/1996 in order to defeat the other sharers. The said Will is not binding to this defendant. This defendant also prayed to partition the properties into three equal shares.

5. The following issues arise for consideration:-

1. Whether the plaint schedule properties are partible by metes and bounds ?
2. If plaint schedule properties are partible, what is the quantum of shares parties entitled to ?
3. Whether the first defendant proves his exclusive right and title over the plaint schedule properties ?
4. Reliefs and costs ?

6. In this case, there is no oral evidence from the side of the plaintiff but exhibits A1 to A7 were marked. From the side of the defendants, DW1 to DW3 were marked and exhibits B1 to B13 were marked.

7. Heard both sides.

8. Issues Nos. 1 to 3:- The present suit is for partition and the plaintiff sought the relief to pass the preliminary decree for partition, partitioning the properties into three equal shares and 1/3 share separately allot to the plaintiff with mesne profits. There are 11 items of properties were included in the present suit.

9. The case advanced by the plaintiff is that plaint schedule property originally belonged to the plaintiff's father Ayyankutty by way of registered deed and verumpattam lease hold right. After the demise of Ayyankutty and Thanka, the properties devolved upon the plaintiff and the defendants. The plaintiff submitted that during the lifetime, Thanka did not execute a Will and she was totally laid up preceding one year before her death and was incapable of distinguishing things. On the other hand, the first defendant contended that the plaint schedule item No.1, 2, 3, 10 and 11 properties are in his absolute possession and enjoyment by virtue of release deed. Thanka executed a Will in his favour and claiming right over the plaint schedule properties No.4 to 9 including the written statement schedule property. The specific case of the defendant is that the plaint schedule item Nos. 4 to 9 are not partible and written statement schedule property are also not partible. Upon the plaint schedule item Nos.1, 2, 10 and 11 properties he is entitled to 3/4 share and is having equity and reservation over the residential buildings in the plaint schedule item No.10 property.

10. In support of the plaintiff's case no oral evidence was adduced but exhibits A1 to A7 documents were marked. Exhibit A1 is the sale deed bearing No.817/1974 of SRO, Alathur with respect to the properties comprised in old survey No.58/13B, 53/A1. The said property was purchased by Ayyankutty and

one Kuttikrishnan Nair. Exhibit A2 is the sale deed bearing No.819/1974 jointly purchased by Ayyankutty and Kuttikrishnan Nair. Exhibit A3 is the relinquishment deed bearing No.239/1979 of SRO, Alathur executed by the said Kuttikrishnan Nair in favour of Ayyankutty by relinquishing his half right over the property covered under exhibits A1 and A2 by receiving consideration. Exhibit A4 is the sale deed bearing No.1385/1985 of SRO, Alathur in the name of Thanka with respect to the property comprised in 56/B8 having extent of 5 Cents. Exhibit A5 is the sale deed No.1165/1974 in the name of Thanka with respect to the property comprised in survey No.58/5A having an extent of 8 Cents. Exhibit A6 is the sale deed No.820/1974 of SRO, Alathur executed in the name of Thanka comprised in survey No.58/5A having extent of 9 Cents. Exhibit A7 is the BTR extract.

11. From the side of the defendant DW1 to DW3 were examined. Exhibits B1 to B13 documents were marked. Exhibit B1 is the original Will bearing No.91/1996 of SRO, Alathur executed by Ayyankutty in the name of his wife Thanka. Exhibit B2 is the deed No.1145/1974. Exhibit B3 is the deed No.223/1976 of SRO, Alathur in the name of Thanka. Exhibit B4 is the sale deed No.1385/1985 in the name of Thanka. Exhibit B5 is the certified copy of release deed No.3061/1996 of SRO, Alathur executed by Thanka and Santhakumari. Exhibit B6 is the relinquishment deed bearing No.3085/1997 and exhibits B7 to B7(b) are tax receipts. Exhibits B8 and B8(a) are the possession certificates. Exhibits B9 and B9(a) are the building tax receipts. Exhibit B10 is the ownership certificate. Exhibit B11 is the building permission. Exhibit B12 is the deed No.720/1974 of SRO, Alathur. Exhibit B13 is the power of attorney.

12. The first defendant in this case mainly relied on Exhibit B1 Will. For proving Exhibit B1 Will, DW1 was examined. DW1 testified that he knows

Thanka, W/o.Ayyankutty and he put his signature on a document executed by Thanka. He identified the signature in exhibit B1. DW1 also testified that Thanka and Komalam also put their signature in exhibit B1. Thanka and Komalam witnessed when he put his signature. He also testified that he and Komalam witnessed Thanka signing in the document. DW1 was cross-examined by the learned counsel for the plaintiff and counsel for the second defendant at length. But nothing has been brought out to discredit the version of DW1.

13. The learned counsel for the plaintiff argued that Exhibit B1 is a false and forged document, and the plaint schedule properties are partible. The plaintiff is entitled to get 1/3 share upon the plaint schedule properties. It is also submitted that for the preceding one year of the death of Thanka, she was totally bed ridden and was unable to understand things, denied the execution of exhibit B1 Will by Thanka.

14. Going by exhibit B1 the property comprised in survey No.104/3 having extent of 0.2060 Hectares, re-survey No.116/8 having extent of 0.0650 Hectares, re-survey No.172/8 having extent of 0.1760 Hectares, re-survey No.179/9 having extent of 0.1830 Hectares, re-survey No.173/13 having extent of 0.0688 Hectares, re-survey No.116/3 having extent of 0.1350 Hectares, re-survey No.110/6 having extent of 0.0202 Hectares, in re-survey No.113/20 having extent of 0.1585 Hectares, 113/21 having extent of 0.0297 Hectares and in re-survey No.113/16 having extent of 0.0320 Hectares. The plaint schedule items No.4 to 9 properties are covered under exhibit B1 Will.

15. The plaintiff, though alleging that Exhibit B1 is forged, did not adduce any convincing evidence to substantiate that allegation. No witnesses were examined, nor were any circumstances shown to suggest that the testator was not in a sound and disposing state of mind at the relevant time. In the present case, the testimony of DW1, being one of the attesting witnesses, satisfies the statutory

requirements. Upon an overall appreciation of evidence, this Court finds no legitimate or suspicious circumstances surrounding the execution of Exhibit B1. The testator is proved to have executed the will of her own free will while in a sound state of mind, and the document stands duly attested in the manner required by law. Hence, the court holds that Exhibit B1 is a valid and genuine will duly proved by the first defendant in accordance with the law. Consequently, the plaintiff's contention that Exhibit B1 is a false and fabricated document cannot be accepted.

16. The plaintiff in this case also challenged the capacity and competency of the mother to execute the exhibit B1 will. The case of the plaintiff is that the mother has no absolute right over the plaintiff's schedule properties to execute the will, and the entire property absolutely belongs to the father. Hence, the will has no legal effects. Exhibit A7 BTR extract alone is not sufficient to show that all the properties originally belonged to father. The plaintiff has also not established that the mother had no absolute right over the properties described in the plaint. Therefore, once exhibit B1 will is accepted as genuine and valid, the plaintiff's claim for partition does not survive in respect of the properties covered under the will. In view of the above findings, this Court held that the plaintiff's schedule properties Item No. 4 to 9 are not partitionable hence a plaintiff's prayer for partition of the said properties is unsustainable.

17. The defendant further contended that as regards the remaining items plaintiff's Item No. 1, 2, 3, 10 and 11, the mother and defendant No. 2 had executed relinquishment deeds marked as Exhibit B5 and B6 in favour of defendant No. 1. Hence the plaintiff's right is limited only to the extent of the remaining properties.

18. Exhibits B5 and B6 have been duly proved by oral evidence and by production of the originals. The execution and authenticity of these documents

were not effectively challenged in the cross-examination. The evidence clearly establishes that the mother and sister of the defendant No. 1 had voluntarily relinquished their right over the properties described in Exhibit B5 and B6 in favour of the defendant No. 1.

19. It is already found that plaint schedule Item No. 4 to 9 are the subject matter of the Will and therefore, plaint schedule Item Nos. 4 to 9 are not partible among the parties. As regards Item Nos. 1, 2, 3, 10 and 11, the evidence shows that the mother and sister, who is the defendant No. 2, relinquished their respective shares in favour of defendant no. 1 under Exhibit B5 and B6. Consequently, the defendant no 1 becomes entitled to their portion as well. Hence with respect to plaintiff Nos. 1, 2, 3, 10 and 11, the plaintiff is entitled to get 1/4 share in the plaint schedule properties. Accordingly, issues Nos . 1 and 2 are answered partly in favour of the plaintiff. Issue No.3 is answered in favour of the first defendant.

20. Issue No.4 :- In the light of the findings under issue Nos.1 and 2, this issue is also answered partly in favour of the plaintiff.

In the result, the suit is decreed in part and preliminary decree is passed as follows :

- i. The plaint schedule item Nos.4 to 9 properties are found not partiable.
- ii. The plaint schedule Item No.1 to 3, 10 and 11 property found partiable and divided into 4 equal shares.
- iii. The plaintiff is entitled to get 1/4 share by separating right and possession over the plaint schedule item No.1 to 3, 10 and 11 properties.

- iv. The first defendant is entitled to get 3/4 shares by separating right and possession over the plaint schedule item Nos.1 to 3, 10 and 11 properties.
- v. The question of equity can be considered at the time of final decree stage.
- vi. Any of the parties who shall deposit sufficient court-fee shall be entitled to apply for passing final decree.
- vii. The costs of the suit shall come out of the estate.

Dictated to Confidential Assistant, transcribed and typed by him, corrected and pronounced by me in open court on this the 29th day of October, 2025.

Munsiff

A P P E N D I X : -

Plaintiff's Witness Examined:- NIL

Plaintiff's Exhibits Marked :-

- | | | | |
|----|------------|---|---|
| A1 | 12.03.1974 | : | Certified copy of the sale deed No. 817/1974 of SRO., of Alathur, executed Panchali Amma and Kochu Gopalan Nair in favour of Kuttykrishnan Nair and Ayyankutty. |
| A2 | 12.03.1974 | : | Certified copy of the sale deed No. 819/1974 of SRO., of Alathur, executed Ammukutty @ Lakshmikutty Amma and others in favour of Kuttykrishnan Nair and Ayyankutty. |

- A3 07.10.1978 : Certified copy of the relinquishment deed No. 239/1979 SRO., of Alathur, executed Kutykrishnan Nair in favour of Ayyankutty.
- A4 29.03.1985 : Certified copy of the Assignment deed No.1385/1985 of SRO., Alathur, executed in favour of Thanka by Kesavan.
- A5 12.03.1974 : Certified copy of the Assignment deed No.1165/1974 of SRO., Alathur, executed in favour of Thanka by Raghavanunni and others.
- A6 12.03.1974 : Certified copy of the Assignment deed No.820/1974 of SRO., of Alathur, executed in favour of Thanka by Ramanunni Nair and others.
- A7 01.11.2016 : Basic tax register issued by the Village Officer, Kavassery No.II Village, in the name of Ayyankutty and Krishnankutty

Defendants Witness Examined:-

- DW1 : K. Sukumaran.
- DW2 : Surendran.
- DW3 : Santhakumari

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Defendants Exhibits Marked :-

- B1 30.08.1996 : Original Will No.91/1996 of SRO., Alathur, executed Thankam.

- B2 12.03.1974 : Original Assignment deed No.1145/1974 of SRO., Alathur, executed in of favour of Thankam by Raghavanunni and Kochu Gopalan Nair
- B3 21.01.1976 : Original Kannam Assignment deed No.223/1976 of SRO., Alathur, executed in of favour of Thankam by Rugmini Amma and Saradha Amma.
- B4 29.03.1985 : Original Assignment deed No.1385/1985 of SRO., of Alathur, executed in of favour of Thankam by Kesavan
- B5 30.08.1996 : Certified copy of Release deed No.3061/1996 of SRO., of Alathur, executed in of favour of Surendran by Thankam and Santhakumari
- B6 09.11.1997 : Certified copy of Relinquishment deed No.3085/1997 of SRO., Alathur, executed in of favour of Surendran by Thankam and others.
- B7 14.11.2019 : Copy of Basic Tax receipt issued by the Village Officer, Kavassery I, Village in the name of Surendran
- B7(a) and (b) 14.11. : Copy of Basic Tax receipt issued by the Village Officer, Kavassery I, Village in the name of Surendran (2 No.s).
- B8 and B8(a)14.11.2019 : Possession certificate issued by the Village Officer, Kavassery II Village in the name of Surendran.(2 No.s).
- B9 and B9(a)17.12.2018 : Building tax receipt issued by the Secretary, Kavassery Gramapanchayath in the name of Surendran. (2 No.s).
- B10 20.06.2019 : Ownership Certificate issued by the Secretary, Kavassery Gramapanchayath in the name of Surendran.

- B11 27.09.2011 : Building permission issued by the Secretary, Kavassery Gramapanchayath in the name of Surendran.
- B12 12.03.1974 : Original Assignment deed No.820/1974 of SRO., Alathur, executed in of favour of Thankam by Ramanunni and others
- B13 21.10.1993 : Mukthiyar Nama executed by Santhakumari in favour of Thankam.

Court Witness & Exhibits :- NIL

Munsiff

Typed by :- Sudhakala
Compared by :- Sabitha

Fair/Copy of Judgment

in O.S.10/2017

Dated :29.10.2025