

IN THE COURT OF THE MUNSIF, THIRUVALLA.

Present: Sri. Aravind S.J, Munsiff

Monday the 29th day of September, 2025.

7th day of Aswina, 1947 S.E.

COMMON JUDGMENT IN
OS Nos. 231/2019 , OS No. 232/2019
and OS No. 240/2019.

OS No. 232/2019.

Between:-

- 1) Sudhakaran. K.G, aged 55 years, S/o. Late. Gopalan,
Kochukulathil Veedu, Ezhinjillam Muri,
Kavumbhagom Village, Thiruvalla.
(Archana Auto Mobiles, Ramanchira, Thiruvalla.)
- 2) Subhashini, aged 52 years, D/o. Late. Gopalan,
Kochukulathil Veedu, Ezhinjillam Muri,
Kavumbhagom Village, Thiruvalla (Now at Vettukuzhy,
Aattuvakkara Junctions, Kurisummoodu. P.O,
Changanacherry.
- 3) Indira Gangadharan, aged 65 years, Kottali Vayalil,
Muthoor. P.O, Thiruvalla.
- 4) K. Jayakumar, aged 50 years, S/o. Late. Thulasi, No. 334,
Labour Colony, Gindi, Chennai - 32, represented by
Power of Attorney holder 1st Plaintiff.
- 5) Santhosh Kumar Kumaran, aged 47 years, 362/1 J, Flat
No. F2, Kavina Enclavo, Panchayath Road,
Mugappair East, Chennai - 37 represented by
Power of Attorney holder 1st Plaintiff.
(By Adv. G. Krishna Kishore and Adv. Vishnu. R. Nair)

Plaintiffs

And:-

1. Sudhakaran. K.G, S/o. Late. Gopalan, aged 55 years,
Kochukalathil House, Perumthuruthy. P.O,
Edingillam Muri, Kavumbhagom Village, Thiruvalla Taluk.
Thiruvalla (Archana Auto Mobiles, Ramanchira,
2. Subhashini, aged 52 years, D/o. Late. Gopalan,
Vettukuzhy, Attuvakara Junction, Kurisummoodu. P.O,
Changanacherry Taluk.
3. Indira Gangadharan, aged 65 years, Kottally Vayalil House,
Muthoor. P.O, Thiruvalla Taluk.
4. Sudharma Sukumaran. S, aged 60 years,
Kochukalathil House, Nallukody. P.O, Defendant
Kochukalathil House, Changanacherry Taluk.
5. Suneesh Kumar. S, aged 39 years,
Nallukody. P.O, Changanacherry Taluk.
6. Aneesh Kumar. S, aged 38 Years, Kochukalathil House,
Nallukody. P.O, Changanacherry Taluk.
7. Ratheesh Kumar. S, aged 36 Years, Kochukalathil House,
Nallukody. P.O, Changanacherry Taluk.

(By Adv. G. Krishna Kishore and Adv. Vishnu. R. Nair for
D1 to D3, D4 to D7 Set exparte)

These Suits having been finally jointly heard on 27-09-2025 and stood over for consideration on 29.09.2025 and on the same day the court delivered the following:

COMMON JUDGMENT IN
O.S. No. 231/2019, O.S No. 232/2019
& O.S. 240/2019

A. O.S No. 231/2019

The suit is for recovery of money.

2. The plaint averments in brief are as follows:- The defendant is the brother of the plaintiff. The father of the plaintiff and the defendant, Sri. Gopalan had 2.40 Ares of property in resy. No. 134/8. After his death, the said property devolved upon the parties herein and their siblings. After the death of two of the siblings of the parties, their right devolved upon their legal heirs. The plaintiff and other legal heirs namely, Subhashini, Indira Gangadharan, Jayakumar. K and Santhosh Kumar had sought for partition of the plaint schedule property to the 1st defendant and other sharers. However the 1st defendant was not ready to partition the property. Thereafter an agreement was reached between the parties to sell the plaint schedule property and to appropriate the sum obtained in proportion to their respective shares. The plaintiff was entrusted to do the needful. The defendant approached the plaintiff and intimated that he requires an amount of Rs. 10,00,000/- for the purpose of construction of his new residential building in Alumthuruthi. He promised that the said amount could be set off against the amount obtained as

the share of the defendant after sale of the property. Considering the said reason and the sibling relation between the parties, the plaintiff paid an amount of Rs. 2,00,000/- to the defendant on 30-08-2018 through his friend, shri Dhaneshan as the plaintiff had to go to Kottayam for an urgent business need. More over, the plaintiff paid an amount of Rs. 2,00,000/- on 18-09-2018 from the account of the plaintiff's wife with SBI Mepral Branch to the account of the defendant with Central Bank of India, Kavumbhagam Branch and an amount of Rs. 1,00,000/- was also transferred from the account of the wife of the plaintiff with Kerala Gramin Bank, Tiruvalla Branch to the account of the defendant on 01-11-2018. Thus the plaintiff had paid an amount of Rs. 5,00,000/- to the defendant. The plaintiff and the defendant had signed an agreement which is attested by the children of the defendant evidencing the payment of the said Rs. 2,00,000/-. However after receipt of the said amount, the defendant was not ready to sell the plaint schedule property and caused obstruction to the sale of the property. He also attempted to alienate his 1/6 share in the plaint schedule property to third persons. Thus the plaintiff had sought for return of the amount on 26-03-2019. However the defendant was not ready to repay the amount. The plaintiff is entitled to realize the said amount with interest @ 9% p.a. Hence the suit.

3. Summons was served on the defendant. The defendant filed written statement contending as follows: The suit is not maintainable either under law or on facts. The relationship between the parties is admitted. The suit is barred by law of limitation. The plaint schedule property is not liable to

be partitioned. The plaintiff is in continuous and uninterrupted of the property for more than 50 years and has perfected title by adverse possession. Therefore it is false to allege that the defendant obtained an amount of Rs. 5,00,000/- from the plaintiff. It is true that the plaint schedule property originally belonged to the father of the plaintiff and the defendant as per partition deed No. 1739/1984 and Sale deed No. 836/1986. The father and mother died in 1992 and 2011 respectively. The defendant is residing in the plaint schedule property for the past 50 years along with their parents and thereafter with his family. There is no money transaction between the plaintiff and the defendant as alleged in the plaint. The plaintiff was taking care of the parents till their death and had provided for all their basic needs. The defendant is a building contractor who is responsible for the day to day oversight of construction sites and the income derived from the work is exclusively used for the welfare of his parents. The defendant had expended more than an amount of Rs. 8,00,000/- for the renovation of the residential building No. 342/5 of Thiruvalla municipality wherein he resides. The defendant is in exclusive possession and enjoyment of the plaint schedule property and the residential building situated therein. The plaintiff and his siblings had never claimed any share in the property. The plaintiff and the other siblings had relinquished their right in the plaint schedule property and the building situated therein. It is false to allege that an amount of Rs. 2,00,000/- was obtained by the defendant on 30-08-2018. An amount of Rs. 20,000/- alone was obtained by the defendant on the said date. It is false to

allege that the defendant obtained an amount of Rs. 5,00,000/-. The defendant has raised the fund from KSFC Thrikkodithanam Branch as loan for construction of the building work. There is no agreement executed in respect of the shares of the plaint schedule property and the agreement itself is a forged one. Neither the defendant nor his children had signed the agreement as alleged in the plaint. The value of the plaint schedule property is more than 1 Crore. The defendant had renovated the residential building situated therein with his own fund and had expended another Rs. 6,00,000/- to convert the paddy field. The share of the plaintiff was given during the life time of the father and thereafter the plaintiff is residing away from the plaint schedule property. The plaintiff has no cause of action to institute the suit. None of the reliefs sought for can be allowed. Hence the suit is liable to be dismissed.

4. Based on the aforesaid pleadings put forth by the parties, the following issues arose for consideration.

1. Whether the plaintiff is entitled to realize the suit amount from the defendant as prayed for?

2. Relief and costs?

B. O.S No 232/2019

The suit is for partition of the plaint schedule property.

6. The plaint averments in brief are as follows:- The plaintiffs 2 and 3 are the sisters of the 1st plaintiff and the 1st defendant is the brother of the 1st plaintiff. The defendants 2 to 5 are the wife and children respectively of the brother of the parties, Sri. Sukumaran. The plaintiffs 4 and 5 are the children of the sister of the plaintiffs 1 to 3 and the 1st defendant, smt. Thulasi. The plaintiffs 1 to 3, smt. Thulasi and shri. Sukumaran are the children of deceased Gopalan. Gopalan obtained title over the plaint schedule property by virtue of Partition deed No. 1379/1984 and Sale deed No. 836/1986. After the death of Gopalan, the plaint schedule property devolved upon his children and wife. The 1st plaintiff is in possession of two rooms in the building situated in the plaint schedule property and other two rooms are in the possession of defendants 2 to 5. The 1st defendant is residing in the remaining portion of the building situated in the plaint schedule property. The plaintiffs have sought for partition of the plaint schedule property several times. However the same could not be done due to the reluctance from the part of the defendants. Thereafter, an agreement was reached between the parties to sell the plaint schedule property and to appropriate the sum obtained in proportionate shares and the 1st plaintiff was entrusted to sell the plaint schedule property. The 1st defendant at that juncture intimated the plaintiff that he requires an amount of Rs. 10,00,000/- as loan and intimated that the said amount could be set off against the amount which is due to the 1st defendant's share after sale of the property. Considering the sibling

relationship between the parties, the 1st plaintiff had paid an amount of Rs. 2,00,000/- to the 1st defendant through his friend, Sri. Dhaneshan on 30-08-2018 as the 1st plaintiff had to go to Kottayam to meet his urgent business needs. Thereafter, the 1st plaintiff had paid an amount of Rs. 3,00,000/- on 18-09-2018 and 01-11-2018 from the account of the wife of the 1st plaintiff, Smt. Ashakumari to the account of the 1st defendant. Thus a total amount of Rs. 5,00,000/- was given to the 1st defendant by the 1st plaintiff. The 1st plaintiff and the 1st defendant had executed an agreement which is attested by the children of the 1st defendant evidencing payment of the amount of Rs. 2,00,000/-. However after receipt of the above said amount of Rs. 5,00,000/-, the 1st defendant was not ready to take necessary steps for selling the plaint schedule property and was attempting to alienate his 1/6 share in the plaint schedule property to strangers. The 1st plaintiff had sought for repayment of the said amount. However the 1st defendant was not ready to repay the amount. The plaint schedule property is partible and the plaintiffs 1 to 3 are entitled to 1/6 share each in the plaint schedule property and the defendants 4 and 5 are together entitled to 1/6 share. Thus the plaintiffs are entitled to 4/6 share in the plaint schedule property. Hence the suit.

7. Summons was served on the defendants. The 1st defendant entered appearance and filed written statement contending as follows: The suit is not maintainable either under law or on facts. The relationship between the parties is admitted. The suit is barred by law of limitation. The

plaint schedule property is not liable to be partitioned. The 1st defendant is in continuous and uninterrupted possession of the plaint schedule property for the past more than 50 years and therefore he has perfected title by adverse possession. It is true that the plaint schedule property originally belonged to the father of the 1st defendant as per Partition deed No. 1739/1984 and Sale deed No. 836/1986 of the Thiruvalla SRO. The father and mother died in 1992 and 2011 respectively. The 1st defendant is residing in the plaint schedule property for the past 50 years. The 1st defendant was taking care off the parents till their death. The 1st defendant is a building contractor and the income derived from his work was exclusively used for the welfare of his parents and he had also spent an amount of more than Rs. 8,00,000/- for renovating the residential building No. 342/5 of Thiruvalla Municipality wherein he resides. Neither the plaintiffs 1 to 5 and defendants 2 to 5 have claimed any share in the plaint schedule property. They had relinquished their right in the plaint schedule property and building therein. The shares were given to the sisters of the 1st plaintiff during the life time of their father and money and ornaments were also given to them during the time of their marriage. The plaintiffs and defendants 2 to 5 were residing at their independent houses away from the plaint schedule property even during the life time of the father. The plaintiffs and defendants 2 to 5 were never in possession of the plaint schedule property as alleged. There is no money transaction as alleged on 30-08-2018. The defendant had received only an

amount of Rs. 20,000/- on the said date. The 1st defendant had not obtained the sum of Rs. 5,00,000/- as alleged. The 1st defendant had raised necessary funds from KSFC Thrikkodithanam branch as a loan for the construction of his building work. There is no agreement executed in respect of the shares of the residential building and the agreement itself is concocted. There is no cause of action to institute the suit. None of the reliefs sought for can be allowed. Hence, the suit is liable to be dismissed.

8. Based on the aforesaid pleadings put forth by the parties, the following issues arose for consideration.

1. Whether the 1st defendant has acquired any right over the plaint schedule property by adverse possession as prayed for?
2. Whether the plaint schedule property is partible? If so, what are the shares to be allotted?
3. Whether the plaintiff is entitled to a decree of permanent prohibitory injunction as prayed for?
4. Relief and costs?

C. O.S No 240/2019

The suit is for a decree of perpetual prohibitory injunction.

10. The plaint averments in brief are as follows:- The 1st defendant is the brother and 2nd and 3rd defendants are the sisters of the plaintiff. The 4th defendant is the wife of the deceased brother of the plaintiff, Sri. Sukumaran and defendants 5 to 7 are their children. The plaint schedule property originally belonged to the father of the plaintiff and defendants 1 to 3 as per partition deed No. 1739/1984 and Sale deed No. 836/1986 of the Thiruvalla SRO. The parents of the plaintiff died in 1992 and 2011. The plaintiff is residing in the plaint schedule property for the past more than 50 years along with the parents and thereafter with his family. The plaintiff was taking care of the parents till their death and he had provided for all their basic needs and necessities. The plaintiff is a building contractor and he has used the income derived from his business for the welfare of the parents. He had also spend an amount of Rs. 8,00,000/- for the renovation of the residential building No. 342/5 of Thiruvalla Municipality wherein he resides. There was an oral agreement between the father and the plaintiff granting absolute right to reside in the plaint schedule property with exclusive possession as the owner of the plaint schedule property. The plaintiff is in exclusive possession and enjoyment of the plaint schedule property and the residential building therein. The defendants have never claimed any share in the plaint schedule property and they have relinquished their rights in the plaint schedule property and the building situated therein. The plaintiff has perfected title to the plaint schedule property by adverse possession. He is in enjoyment of the plaint schedule property openly and peacefully to the

knowledge of the defendant for the past more than 50 years. The shares were given to the sisters of the plaintiff during the life time of the father and they had also relinquished their shares in the plaint schedule property. More over gold ornaments and money were also given to them at the time of their marriage. The defendants were residing away from the plaint schedule property even during the life time of the father. The plaintiff apprehends that the defendants are now trying to evict him forcefully from the plaint schedule property. The same is illegal and unauthorized. The defendants have no right to evict the plaintiff from the plaint schedule property forcefully. The defendants have no manner of right to trespass into the plaint schedule property, commit acts of waste therein, to cause damage to the residential building, or to take yield from the property. Hence the suit.

11. Summons was served on the defendants. The defendants 1 to 3 entered appearance and filed written statement contending as follows: The suit is not maintainable either under law or on facts. It is false to allege that the plaintiff has exclusive right and ownership over the plaint schedule property. The relationship between the parties is admitted. It is false to allege that the plaintiff is residing in the plaint schedule property for the past 50 years. The plaintiff has never taken care of the parents. The plaintiff and his family had resided at various houses away from the plaint schedule property for decades. He had not spent any amount for the renovation of the building in the plaint schedule property. The brother of the 1st defendant, Sri. Late

Sukumaran and his family were residing in the plaint schedule property for decades and had maintained the building. The building situated in the plaint schedule property is in a dilapidated stage. The father of the plaintiff had obtained title over the property only in 1986 and the building was constructed only in 1997. Therefore, it is impossible for the plaintiff to reside in the building situated in the plaint schedule property for the past 50 years as alleged. The 1st defendant resided in the house situated in the plaint schedule property from 1987 till 2012. He maintained his father and mother till his death. The brother, Sukumaran lived in the house with his family from 1991 till 2008. The plaintiff had purchased a house and property from one Kunju Panickan and others in the year 1991 and was residing in the building situated therein for several years. After the death of the father, the plaintiff came back to the family house in the plaint schedule property and resided along with the 1st defendant and his family and Sukumaran and his family. The plaintiff also purchased a property in Perunthuruthi in 1997 and sold it the same year. He again purchased a property in 2006 from one Soman and his wife Vijayamma and resided in the building situated therein with his family till 2012. He came to the plaint schedule property only in June 2012. During the period from 2006 to 2012, he was not residing in the plaint schedule property. The 1st defendant resided in the house situated in the plaint schedule property till 2012 and even thereafter he is in possession two rooms in the building. The plaintiff is presently residing in the building in the plaint schedule property from June 2012 with the permission of the siblings as a

temporary arrangement subject to the condition of facilitating partition at the earliest. The plaint schedule property is in the joint ownership and possession of the other sharers also. The plaintiff never got any exclusive ownership, possession or enjoyment of the property. The defendants became co-owners of the property in 1992 and they have been in possession and enjoyment of the property till now. The defendants had always demanded partition of the assets. The ration card in the plaint schedule property was in the name of the 1st defendant and his family and the mother Karthiyayani. This would also show that the plaintiff was not a resident of the property earlier. The plaintiff got ration card in the building situated in the plaint schedule property only after 2012. These defendants had never tried to evict the plaintiff forcefully from the plaint schedule property. The plaintiff had demanded Rs. 10,00,000/- from the 1st defendant based on the expected value of his 1/6 share in advance assuring that the amount would be paid back and adjusted at the time of sale of the plaint schedule property. The 1st defendant believing his words had paid an amount of Rs. 5,00,000/- to the 1st defendant. After receiving the amount, the plaintiff attempted to cause hindrance to partition or sale of the property. He has also denied the fact that he has received an amount of Rs. 5,00,000/- from the 1st defendant. The 1st defendant had filed O.S. 231/2019 for realization of the above said amount of Rs. 5,00,000/- and a partition suit as O.S. No. 232/2019 is also pending before this court for partition of the plaint schedule property. None of the reliefs sought for can be allowed. Hence, the suit is liable to be dismissed.

12. Based on the aforesaid pleadings put forth by the parties, the following issues arose for consideration.

1. Whether the plaintiff is entitled to a decree of perpetual prohibitory injunction as prayed for?

2. Relief and costs?

13. As per the order of this court in I.A. No. 4/2023, O.S. 231/2019, 232/2019 and 240/2019 were consolidated and tried together. O.S. 232/2019 was taken as the leading case. The plaint schedule property in OS. No. 232/2019 and 240/2019 are the same and the parties shall hereinafter be referred to as per their status in O.S. No. 232/2019 unless otherwise required. With the aforesaid pleadings, the parties went to trial. The plaintiffs examined PW1 to PW4 and Ext A1 to A13 were marked. Ext. A9 and A10 were marked as subject to proof. The same are the transaction details with respect to the account of the wife of the plaintiff. The wife of the plaintiff was later examined as PW3 and she had admitted the said documents. Therefore the said documents are admitted in evidence. Ext. A4, A5 and A6 are only photocopies of identity cards of the 1st plaintiff. As original of the said documents are not produced, the said documents are not admitted in evidence. The defendants examined DW1 to DW4 and Ext. B1 to B5 are marked. Commission report and rough sketch filed as per order in I.A. No. 1450/2019 in O.S. No. 231/2019 were marked as Ext C1 and C1(a).

Commission report and rough sketch filed as per order in I.A. No. 3/2020 in O.S. No. 232/2019 were marked as Ext C2 and C2(a). Commission report and rough sketch filed as per order in O.S. No. 240/2019 were marked as Ext C3 and C3(a).

14. Heard the learned counsel for both sides.

15. Issue No 1 and 2 in OS No. 232/2019: These issues are considered together for brevity and for the sake of convenience. The case of the plaintiffs is that the 2nd and 3rd plaintiffs and the 1st defendant are the siblings of the 1st plaintiff and that they are the Children of one Gopalan. Defendant nos. 2 to 5 are the legal representatives of the deceased brother of plaintiffs 1 to 3, Sri Sukumaran and Plaintiffs no. 4 and 5 are the children of the sister of the plaintiffs no. 1 to 3 and defendant no. 1, Smt. Thulasi. It is contended that the said Gopalan was the owner of the plaint schedule property by virtue of partition deed No. 1739/1984 and sale deed No. 836/1986 and that after his death, the plaint schedule property devolved upon the parties herein. The bone of the contention of the plaintiffs is that the plaint schedule property is partible and that the plaintiffs are entitled to 4/6 share in the plaint schedule property. Per contra, the 1st defendant contended that the plaint schedule property is in his exclusive possession and that he had obtained absolute title over the plaint schedule property by virtue of adverse possession. It is also contended that the plaintiffs and the other defendants have relinquished their shares in the plaint schedule property long ago and that they were never in

possession of the plaint property.

16. In order to substantiate their contentions, the 1st plaintiff in the case was examined as PW1. He filed affidavit in lieu of examination in chief. The 4th and 5th plaintiffs had executed Power of Attorneys in favour of PW1. The said Power of attorneys were produced and marked Ext A11 and Ext A12 respectively. PW1 deposed that his father, shri. Gopalan obtained title over the plaint schedule property by virtue of partition deed no. 1739/1984 and 836/1986. Ext A1 is the partition deed No. 1739/1984 and Ext A2 is the sale deed No. 836/1986. Ext A3 is the tax receipt in favour of the said Gopalan with respect to the plaint schedule property. Ext A1 would show that the said Gopalan obtained 4 1/2 cents of property in old Survey No. 265/14A. Ext A2 would show that the said Gopalan obtained title over 2.63 ares of property in old Survey No. 269/15A. The said documents were also produced by 1st defendant and were marked as Exts B1 to B3 respectively. Exts A1 to A3/B1 to B3 would show that the said Gopalan obtained title over the plaint schedule property. The title of the said Gopalan over the plaint schedule property is not in dispute in the present case. It is also not in dispute that the said Gopalan and his wife are no more and that the parties herein are the legal heirs of the Gopalan. The dispute in the present case pertains to the contention of defendant no. 1 that he has obtained exclusive title over the plaint schedule property by virtue of adverse possession.

17. Before delving further, it is necessary to recapitulate certain

fundamental principles which are relevant to resolve the dispute in the present case. In *Govindammal v. R. Perumal Chettiar & Others* ((2006) 11 SCC 600), the honourable Supreme Court held that *“a co-sharer becomes constructive trustees of the other co - sharers and the right of a person or his predecessor in interest is deemed to have been protected by the trustees. In order to prove ouster and adverse possession against the co - sharer, the following relevant factors have to be taken into consideration:*

(i) Exclusive possession and perception of profits for well over the period prescribed by the law of limitation;

(ii) Dealings by the party in possession treating the properties as exclusively belonging to him;

(iii) The means of excluded co - sharer of knowing that his title has been denied by the co - owner in possession.

Although the plea of ouster is a weak defence in a suit for partition, it is not altogether impermissible under law to put forward a claim for ouster in a suit for partition.”

18. It is now necessary to consider whether defendant no. 1 was successful in pleading and proving their case of adverse possession. The defendant no. 1 had pleaded that he was in possession and enjoyment of the plaint schedule property openly and peacefully to the knowledge of the plaintiffs and other defendants since the last 50 years. This pleading itself is

false as the said Gopalan obtained title over the plaint schedule property only during 1984 and 1986 as is evident from Ext A1 and A2 and Gopalan died only in 1992. Therefore, the intestacy opened only in 1992 and thus the contention of defendant no. 1 that he was in possession of the property for the past 50 years cannot be believed at all. There is also no pleading regarding ouster of the other co-owners of the plaint schedule property. There is also no specific pleading regarding the hostility of possession. There are no categorical pleadings regarding the period from which defendant no. 1 is claiming adverse possession.

19. The 1st defendant in the case was examined as DW1. He filed affidavit in lieu of examination in chief. During the course of his cross examination, he had deposed that "അന്യായ പട്ടിക വസ്തു Ext A1, A2 ആധാരങ്ങൾ പരകാരം 1-3 വാദികളുടെയും താങ്ങളുടെയും പിതാവായ ഗോപലന് അവകാശപ്പെട്ടിരുന്നതാണ്? അതെ (എ) ഇപ്പോഴും അദ്ദേഹത്തിന്റെ പേരിലാണ് കരം തീർക്കുന്നത്. *****ഗോപാലന്റെ വക അന്യായപട്ടിക വസ്തു അദ്ദേഹത്തിന്റെ ആറു മക്കൾക്കും തുല്യമായി ആറിൽ ഒന്ന് അവകാശമുണ്ടല്ലോ ? അവകാശമുണ്ട്. അഞ്ചുപേരും അമ്മ മരിക്കുന്നത് വരെ വന്നിട്ടില്ല (എ) നിങ്ങൾക്ക് പട്ടിക വസ്തുവിൽ എന്തെങ്കിലും അവകാശം ലഭിക്കുന്ന രീതിയിൽ പിതാവ് ആധാരം ചമച്ചിട്ടില്ല ? ആർക്കും ചമച്ചിട്ടില്ല (എ)*****1987 ലാണ് അന്യായ പട്ടിക വസ്തുവിലെ പുര നിർമ്മിച്ചത്. പിതാവിന് പട്ടിക വസ്തുവിൽ അവകാശം ലഭിച്ചത് 1986 ലാണ്. താങ്കൾ ദശാബ്ദങ്ങളായി മറ്റു പല സ്ഥലങ്ങളിലും വസ്തു വാങ്ങിയും വാടകയ്ക്കും ഒക്കെ താമസിക്കുകയായിരുന്നല്ലോ? വാടകയ്ക്ക് താമസിച്ചിരുന്നു. അച്ഛൻ മരിച്ചതിനുശേഷം ഉദ്ദേശം രണ്ടു മൂന്നു വർഷം അപരകാരം താമസിച്ചിരുന്നു(എ)*****താങ്കൾക്കും സഹോദരങ്ങൾക്കും വസ്തുവിൽ തുല്യ അവകാശമാണ് ? അതെ (A)" The admission of DW1 during the cause of his cross examination that the parties herein have equal share over the p/aint

schedule property would itself cut the root of the case of defendant no. 1 that he obtained exclusive possession of the property by virtue of adverse possession.

20. Moreover, Ext A7 is the ration card of the 1st plaintiff with respect to the address "കൊച്ചുകുളത്തിൽ വീട്". DW1 admitted that Ext A7 pertains to the building situated in the plaint schedule property. Ext A7 would show that the name of the 1st plaintiff, his mother and his family are stated as the persons residing in the said address. Ext B4 is the ration card produced by DW1 dated 24-10-2008. Ext B5 is the ration card during 1996 produced and marked through DW2, who is the son of the 1st defendant. Ext B4 and B5 are in the name of defendant no. 1 and the address stated is the same as that of Ext A7. However, the name of the mother is not stated in Ext B4 and B5. DW1 had categorically admitted that the mother resided in the building situated in the plaint schedule property till her death. It is not in dispute that the mother died during 2011. The fact that the name of the mother is not mentioned in Ext B4 and B5 would cast doubt regarding the fact whether the same pertains to the building in the plaint schedule property.

21. Even if Ext B4 and B5 pertains to the plaint schedule property, it does not mean that the 1st defendant was holding the property exclusively with the knowledge of the other co-owners and had ousted them from the co-ownership right. Ext B4 and B5 by no stretch of imagination can be taken to hold that the 1st defendant was holding the property exclusively and had

ousted the other co-owners from the plaint schedule property. It is already found that the 1st defendant had failed to aver and prove the ingredients of adverse possession and ouster. Thus, Ext B4 and B5 would not improve the case of the 1st defendant. Ext A8 is the Deed No. 1503/2006 executed in favour of defendant no. 1. The said document was produced to show that defendant no. 1 has another property and a residential building therein. DW1 had admitted that he was residing in a rented house and that he had purchased a property in 1991 and was residing in the building situated therein. He had also admitted that he has resided in the residential building stated in Ext A8 document.

22. Even though defendant no. 1 had contended that the plaintiffs and the other defendants have relinquished their share in the plaint schedule property, the above reproduced admission of DW1 would itself negate the said contention. Moreover, the averment regarding relinquishment of share by the other co-owners is mutually contrary to the contention of adverse possession in as much as if there was intentional relinquishment of share as alleged, there would be no hostile title so as to claim adverse possession. The contention of the defendant no. 1 that he had expended sum for the renovation of the residential building situated in the plaint schedule property is also to be negated as there is no evidence regarding the said fact. Even if he had done so, the same would enure to the benefit of the other co-owners and the 1st defendant cannot seek any benefit out of the same as possession

of one co-owner is possession for all and the 1st defendant had failed to prove the adverse possession and ouster.

23. The upshot of the above discussion is that the plaint schedule property is partible. The plaintiffs 1 to 3 and defendant no. 1 are the children of the deceased Gopalan and they are entitled to 1/6 share each in the plaint schedule property. It is not in dispute that plaintiffs 4 and 5 are the children of the sister of the said parties and thus they are together entitled to 1/6 share in the plaint schedule property. The defendants 2 to 5 are the legal heirs of the deceased brother of the 1st plaintiff and thus they are together entitled to 1/6 share in the plaint schedule property. The plaintiffs have sought for joint allocation of 4/6 share in the plaint schedule property in their favour. Court fee is only paid with respect to the same. Thus this Court is of the opinion that the plaintiffs are together entitled to 4/6 share in the plaint schedule property, the 1st defendant is entitled to 1/6 share in the plaint schedule property and defendant nos. 2 to 5 are together entitled to 1/6 share in the plaint schedule property. The plaintiffs had sought for sale of the plaint schedule property if partition of the said property is found to be impracticable. The same can be considered during the final decree proceedings and cannot be decided at this stage. Thus, Issue Nos. 1 and 2 in OS No. 232/2019 are found in favour of the plaintiffs.

24. Issue No. 3 in OS No. 232/2019: Even though an issue regarding

decree of perpetual prohibitory injunction was framed by this court, there is no pleading nor any relief sought regarding the same. Thus, the said issue need not be considered. Hence, Issue No 3 is found accordingly.

25. Issue No. 1 in OS No. 240/2019: The defendant no. 1 had filed OS 240/2019 for a decree of perpetual prohibitory injunction contending that he has exclusive right over the plaint schedule property and that the defendants therein are to be restrained from trespassing into the plaint schedule property, from making any damages to the residential building, taking yield from the plaint schedule property or from committing acts of his therein. It is already found that defendant no. 1 has no exclusive right or title over the plaint schedule property and that the defendants herein are also co-owners with respect to the plaint schedule property. Therefore, no relief of perpetual prohibitory injunction regarding trespass or from taking yields can be granted in favour of the plaintiff herein against the defendants herein. Even though the plaintiff herein had sought for relief to restrain the defendants from causing any damages to the residential building and from committing acts therein, there is no pleading regarding the apprehension of the plaintiff in OS No. 240/2019 with respect to the said facts. When there is no specific pleading regarding the same in the plaint in OS No. 240/2019, no relief can be granted in favour of the plaintiff in that regard also. Thus, Issue No. 1 in OS No. 240/2019 is found against the plaintiff in OS No. 240/2019.

26. Issue No 1 in OS No.231/2019: OS No. 231/2019 is filed by the 1st

plaintiff against defendant no. 1 for realization of an amount of ₹ 5,00,000/- from the 1st defendant. It is the case of the plaintiff herein that there was an agreement between the sharers of the plaint schedule property to sell the property and to proportionately appropriate the sum obtained and that the 1st defendant had sought for an amount of ₹ 10,00,000/- from the plaintiff and it was promised that the said amount would be set off against the amount which is due to the 1st defendant after sale of the property. The contention of the 1st plaintiff is that on 30-08-2018, he had paid an amount of ₹ 2,00,000/- to the 1st defendant through his friend, Sri Dhanesan and that an amount of ₹ 2,00,000/- and Rs 1,00,000/- were transferred to the account of the 1st defendant from the account of the wife of the 1st plaintiff on 18.09.2018 and on 01.11.2018 respectively. Thus the 1st plaintiff contends that an amount of ₹ 5,00,000/- was received by the 1st defendant and that the 1st defendant was thereafter not ready to conduct sale of the plaint schedule property and is also unwilling to repay the amount obtained by him. The 1st defendant has denied the contention of the 1st plaintiff that there was any money transaction between the parties and has contended that the 1st defendant is in exclusive possession and enjoyment of the plaint schedule property and the residential building situated therein. It is however admitted that an amount of ₹ 20,000/- was obtained by the 1st defendant on 30-08-2018.

27. PW1 had categorically deposed that he had paid an amount of ₹ 5,00,000/- to DW1. The plaintiff examined his wife as PW3. She deposed that an amount of ₹ 2,00,000/- was transferred on 18.09.2018 and an amount of

₹ 1,00,000 was transferred on 01.11.2018 to the account of the 1st defendant. The factum of receipt of the said amount of Rs 3,00,000/- in account was admitted by DW1 during the course of his cross examination on the dates as alleged by the 1st plaintiff. DW2 had also admitted receipt of the sum of Rs 3,00,000/- from the account of PW3. DW3 is the wife of DW2. She also admitted that she is aware of the transaction between the parties to the tune of Rs 3,00,000/-. DW4 is the daughter of DW1. She also admitted during the course of her cross examination that DW1 had received an amount of Rs 3,00,000/-. Therefore, there need not be any further enquiry regarding payment of the sum of Rs 3,00,000/- to the 1st defendant and it can be safely concluded that the 1st defendant has obtained an amount of Rs 3,00,000/- from the 1st plaintiff.

28. It is however deposed by DW1 that he had returned the said amount. There is no document produced evidencing repayment of the said amount. DW2 had also deposed that the said sum was repaid. However, he was also incapable to depose the manner in which the said sum was repaid by DW1. DW3 had admitted that she did not see any repayment made by DW1. DW4 had also deposed that the said sum of Rs 3,00,000/- was repaid by DW1. However, she had admitted that she has only hearsay knowledge regarding the same. It is interesting to note that there is no pleading to the effect that DW1 had repaid the sum of Rs 3,00,000/- to the 1st plaintiff. The case in the written statement is one of total denial. Therefore, it cannot be considered that the 1st defendant had repaid the sum of Rs 3,00,000/- to the 1st plaintiff.

Thus, it is indubitable that the 1st plaintiff is entitled to realize a sum of Rs 3,00,000/- from the 1st defendant.

29. The question then remains is the entitlement of the 1st plaintiff to obtain the remaining sum of Rs 2,00,000/- which PW1 alleges to have been given to the 1st defendant through his friend Dhaneshan. PW1 has also relied on Ext A13 agreement in support of his case of payment of the sum of Rs 2,00,000/-. The 1st defendant had vehemently denied the execution of Ext A13 document. Ext A13 would show that the same is an agreement entered into between PW1 and PW3 whereby PW1 agreed to give an amount of Rs 10,00,000/- to DW1 and that the said amount would be set off against the amount obtained as the share of DW1 when the plaint schedule property is sold. It is stated at the foot of the last page of the said document that an amount of Rs 2,00,000/- was received on 30-08-2018.

30. When execution of a document is denied, the burden is on the person who wants to rely on the document to prove its due execution. PW1 admitted that Ext A13 was not executed when the amount of Rs 2,00,000/- was paid to DW1. Ext A13 is dated 30-08-2018. It is the very same day on which the 1st plaintiff alleges that he gave the sum of Rs 2,00,000/-. However, the factum of receipt of the said sum of Rs 2,00,000/- is not typed as in the case of the other terms. It is handwritten at the foot of the last page of the document. DW2 and DW4 are stated as the attesting witness to Ext A13. They

had vehemently denied the execution of the said document. According to PW1, Ext A13 was entered into after the payment of the sum of Rs 2,00,000/-. If that be so, nothing prevented the parties to incorporate the said fact in the body of the agreement and not at the foot of page no. 3. The attesting witnesses had attested the said document before the said writing at the foot. The signature seen at the foot of the 3rd page and the one stated to be of the 1st defendant on the remaining pages have stark differences which fact could be concluded even with a bare perusal of the same.

31. When DW1, DW2 and DW4 had denied the signature in Ext A13 document and when the recital regarding the payment of a sum of Rs 2,00,000/- at the bottom of the last page appears to be unreliable and when there are no other materials to show that the signature and handwriting is that of the said persons, it is not possible to rely upon Ext A13 to conclude that the 1st defendant has obtained the sum of Rs 2,00,000/-. It is now necessary to consider if there are other materials to conclude that DW1 had obtained the sum of Rs 2,00,000/- from PW1. The consistent case of PW1 was that the said sum was paid through his friend, shri. Dhaneshan as he had to go to Kottayam to attend an urgent business need on the said day. DW1 had deposed that he does not know the said Dhaneshan. However, there is no such averment in his pleadings that he has no acquaintance with the said Dhaneshan. According to him, he had obtained an amount of Rs 20,000/- on that day. There is no pleading as to the manner in which he obtained the sum

of Rs 20,000/- on 30-08-2018. It is merely pleaded that he obtained a sum of Rs 20,000/- on that day. There is no denial of the averment made by the 1st plaintiff that the said sum was paid to the 1st defendant through the said Dhaneshan. When the same is compared with the plaint averments, it would only mean that the said sum was received from shri. Dhaneshan on the said day.

32. The said Dhaneshan was examined as DW4. He filed affidavit in lieu of Examination in chief. He had categorically deposed that he had given the sum of Rs 2,00,000/- to the 1st defendant as directed by the 1st plaintiff and that the said sum was given to him by the 1st plaintiff to be given to the 1st defendant. He had also deposed that he had counted the notes before receiving the same and that there was 4 packs of hundred Rs 500/- notes. There is nothing to show that he is an interested witness or that he is at loggerheads with the 1st defendant. His deposition corroborates the one made by PW1. These deposition coupled with the contention in the written statement regarding receipt of payment of Rs 20,000/- would show that the sum that the 1st defendant received was Rs 2,00,000/- and not 20,000/- as alleged by him. It is also pertinent to note that the 1st defendant had not challenged the financial capacity of the 1st plaintiff to raise the sum of Rs 2,00,000/-.

33. It is true that in ordinary course, there would be some document evidencing payment of Rs 2,00,000/- and it is already found that Ext A13 is

not proved. However, it is also pertinent to consider the sibling relation between the parties. The parties were in cordial terms during the relevant period as it is evident that the 1st plaintiff had thereafter also made payments to the 1st defendant. Therefore, the mere fact that Ext A13 is not proved cannot be a reason to hold that the 1st plaintiff has failed to prove the payment of the sum of Rs 2,00,000/- to the 1st defendant. None of the other witnesses produced by the 1st defendant could also depose anything concrete to deny the receipt of Rs 2,00,000/- by the 1st defendant from the 1st plaintiff. The upshot of the above discussion is that the 1st defendant is liable to pay the sum of Rs 5,00,000/- to the 1st plaintiff. The 1st plaintiff has also sought for interest @9% per annum. Considering the facts of the case and the prevailing rate of interest, this court is of the opinion that the interest can be fixed at 6% per annum. The transaction is not commercial and thus the proviso to s. 34 would not apply. Thus, this court is of the opinion that the plaintiff in OS No. 231/2019 is entitled to receive an amount of Rs 5,00,000/- from the defendant therein with interest @ 6 % per annum from the date of suit till date of actual realization of the amount. Thus, Issue No 1 in OS No. 231/2019 is found accordingly.

34. Issue No 2 in OS No. 231/2019 and 240/2019 and Issue No 4 in OS No. 232/2019: Based on the discussion made above, OS No. 231/2019 and OS No. 240/2019 are liable to be decreed and OS No. 240/2019 is liable to be dismissed. The General rule is that the costs shall follow the event. OS No.

231/2019 is filed for recovery of money. Hence, the plaintiff in OS No. 231/2019 is entitled to the costs of the suit. Considering the near relation between the parties, the parties are directed to bear their respective costs in OS No. 240/2019. Preliminary decree for partition is passed in OS No. 232/2019. The honourable Apex Court in Kattukandi Edathil Krishnan and another v. Kattukandi Edathil Valsan and others (AIR 2022 SC 2841) had held that *“once a preliminary decree is passed by the Trial Court, the Court should proceed with the case for drawing up the final decree suo motu. After passing of the preliminary decree, the Trial Court has to list the matter for taking steps under Order XX R.18 of the CPC. The Courts should not adjourn the matter sine die, as has been done in the instant case. There is also no need to file a separate final decree proceedings. In the same suit, the Court should allow the concerned party to file an appropriate application for drawing up the final decree. Needless to state that the suit comes to an end only when a final decree is drawn.”* In view of the said dictum of the Honourable Apex Court, the case is adjourned to take steps under O XX R 18 CPC. The parties are allowed to file appropriate application for drawing up the final decree.

In the result, OS No 231/2019 and OS No. 232/2019 are decreed as follows:-

- 1. The defendant in OS No. 231/2019 do pay an amount of Rs 5,00,000/- to the plaintiff therein with interest at the rate of**

6% per annum from the date of suit till date of actual realization of the amount.

- 2. The plaintiff in OS No. 231/2019 is entitled to the costs of the suit.**
- 3. The plaint schedule property in OS No. 232/2019 is found partiable.**
- 4. The plaintiffs in OS No. 232/2019 are together entitled to 4/6 share over the plaint schedule property. The 1st defendant is entitled 1/6 share and defendants 2 to 5 are together entitled to 1/6 share in the plaint schedule property therein.**
- 5. The plaintiffs are entitled to get separate possession of his share.**
- 6. The defendants are entitled to separate possession of their share on payment of requisite court fees.**
- 7. Costs shall come out of the estate.**
- 8. Parties are permitted to file appropriate application for drawing up the final decree.**
- 9. OS No. 240/2019 is dismissed without costs.**

Dictated to the confidential Assistant, typed by her, corrected and pronounced by me in open court, this the 29th day of September, 2025.

SD/-

ARAVIND. S.J.
MUNSIFF

APPENDIX

Exhibits marked for Plaintiff:

- A1 Certified Copy of Partition deed No. 1739/84 dated 19.06.1984 of Thiruvalla Sub Registrar Office.
- A2 Certified Copy of Sale deed No. 836/86 dated 19.03.1986 of Thiruvalla Sub Registrar Office.
- A3 Tax Receipt No. KL03050404641/2024 dated 24.08.2024 of Kavumbhagom Village Office.
- A4 Copy of Aadhar Card of Sudhakaran. K.G No. 503525099478.
- A5 Copy of Voters ID No. KL/16/105/255131 of Sudhakaran
- A6 Copy of driving Licence of K.G. Sudhakaran No. KL3019830001708.
- A7 Original Ration Card (No. 1313035652)
- A8 Certified Copy of Sale deed No. 1503/06 dated 22.05.2006 of Thiruvalla Sub Registrar Office.
- A9 Copy of Transaction details for the A/c No. 3596056826 . Central Bank of India dated 18.09.2018.
- A10 Transaction Certificate issued from Kerala Gramin Bank, Thiruvalla Branch.
- A11 Power of Attorney dated 21.05.2019 executed by K. Jayakumar.
- A12 Power of Attorney dated 21.05.2019 executed by Santhosh Kumar Kumaran.
- A13 Agreement dated 30.08.2018.

Exhibits marked for Defendants:-

- B1 Copy of Partition deed No. 1739/84 dated 19.06.1984 of Thiruvalla Sub Registrar Office.
- B2 Copy of Sale deed No. 836/86 dated 19.03.1986 of Thiruvalla Sub Registrar Office.

- B3 Tax Receipt No.KL03050402229/2025 dated 29.04.2025 of Kavumbhagom Village.
- B4 Original Ration Card (No. 1313035984)
- B5 Original Ration Card (PTA. 107943)

Court Exhibits:-

- C1 Commission Report prepared and submitted by Advocate Commissioner Adv. Juby Cherian on 29.05.2019.
- C1(a) Rough Sketch prepared and submitted by Advocate Commissioner Adv. Juby Cherian on 29.05.2019.
- C2 Commission Report prepared and submitted by Advocate Commissioner Adv. Juby Cherian on 10.03.2020.
- C2(a) Rough Sketch prepared and submitted by Advocate Commissioner Adv. Juby Cherian on 10.03.2020.
- C3 Commission Report prepared and submitted by Advocate Commissioner Adv. Jubin. J. George on 29.06.2020.
- C3(a) Rough Sketch prepared and submitted by Advocate Commissioner Adv. Jubin. J. George on 29.06.2020.

Witness Examined for Plaintiff:

- PW1 - Sudhakaran. K.G
- PW2 - Juby Cherian
- PW3 - Ashakumari. C.D
- PW4 - Dhaneshan. M.

Witness Examined for defendant

- DW1 : Vidyasagar. K.G,
- DW2 : Sangeeth Sagar
- DW3 : Sruthy Mary Skariah
- DW4 : Neethumol. S

ID/-
MUNSIFF.

Typed by:Shineymole. B/Compared by:Jayapriya. P