IN THE COURT OF THE MUNSIFF, THIRUVALLA.

Present: Sri. Aravind S.J, Munsiff

Wednesday the 26th day of November, 2025.

5th day of Agrahayana, 1947 S.E.

OS No. 326/2020

Between:-

A.P. Sasikumar, aged 73, S/o. Late. G. Pachupillai and
Late. Bhargavi Amma. Karimurimaliyil Veedu,
Paliakkara muri, Thiruvalla Village, Thiruvalla. Plaintiff
(By Adv. G. Krishna Kishore))

And:-

A.P. Balagopal, aged 75, S/o. Late. G. Pachu Pillai and
Late. Bhargavi Amma, Mohanam Flat No. 406,
Classic Apartments, Jeppu, Marnamikatta Circle, Defendant
Mangalore – 575002.
(By Adv. D. Sreekumar)

This Suit having been finally heard on 19-11-2025 and stood over for cosideration on 26.11.2025 and on the same day the court delivered the following:

J U D G M E N T

The suit is for partition.

2. The plaint averments as amended in brief are as follows:- The defendant is the elder brother of the plaintiff. The parties are Hindus. The plaint schedule item No.1 property originally belonged to the parents of the parties, Sri. Pachupillai and Bhargaviamma and they had constructed a residential building therein and were residing in the said building. Thereafter

the plaintiff had done maintenance work in the said building and had extended the said building and is residing therein with his wife. The defendant was employed at Karnataka State Electricity Board and is now retired. The plaintiff and his wife were taking care of the parents and residing in the plaint schedule item No.1 property. The plaintiff was employed at HMT and he is now leading a retired life. The plaint schedule item No.2 property originally belonged to the mother, Smt. Bhargaviamma. The father of the parties died on 20-06-1992 and the mother died on 21-12-2006. After the death of the parents, the plaintiff and the defendants became co-owners in joint possession of the plaint schedule properties. The plaintiff had sought for partition of the plaint schedule properties several times. The defendant also agreed to the same and thus Advocate MVS Nampoothiri who was a practicing lawyer of the Hon'ble High Court of Kerala acted as the mediator during 2014 January. The plaint schedule item No. 1 and 2 properties were measured after the said mediation talks and the boundaries were thus separated. The original of the document pertaining to the plaint schedule properties were in the possession of the plaintiff. The same was obtained by the defendant through the mediator, Sri. MVS Nampoothiri for the purpose of executing the partition deed. Thereafter the defendant was not ready to execute the partition deed and he returned to Karnataka. The defendant was thereafter not ready to return the title documents or to execute the partition deed. Thus the title deeds with respect to the plaint schedule properties is not in the possession of the plaintiff. However the plaintiff is paying property tax for the plaint schedule properties. The plaint schedule properties are partiable and the plaintiff is entitled to ½ share in the plaint schedule properties. Hence the suit is filed.

3. Summons was duly served on the defendant. The 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 plaintiff and the defendant had another sibling by name A.P. Mohanan and he was a martyr in the Indo-Pak war during 1971. A small residential building was constructed in the property obtained by the father having an extent of 22 cents during 1954 and paddy cultivation was being conducted at the northern portion of the said property. There were other cultivations in the property and the family were living with the income derived from the said property. After the death of the brother, the father had obtained 22 cents of property as pattayam and he was cultivating in the said property. The plaintiff did not complete his 10th standard. The defendant had completed his 10th standard in 1962 and he had joined Thiruvalla Marthoma College for his Pre University class and had completed BSc course. The plaintiff obtained job as per dying in harness due to the death of the brother and he had joined HMT department in Heat treatment section and had thereafter obtained VRS from the said company. The mother died on 21-12-2006 and the father died on 20-06-1992. The defendant obtained a job in Karnataka State Electricity Board during 1970. The father had purchased 20 cents of property from one Lakshmikkuttiamma and Parameswaran Pillai in 1973 for an amount of Rs. 250/- per cent. The consideration for the said

transaction was obtained from five chitties and from the amount in the possession of the father and from the amount which was sent to the father by the defendant and the deceased brother, Sri. Mohanan. The residential building is now situated in the 20 cents of property. The building materials for constructing the building during 1973 was purchased from the funds given by the defendant. The plaintiff has not paid any amount for the construction of the building from the property. The plaintiff had also paid Rs. 10,000/- obtained from his father-in – law for the construction of the said building. The plaintiff was unilaterally taking yield from the cultivations from the plaint schedule properties and was appropriating the same. The plaintiff had also obtained the fixed deposit of the father with the SBI Bank and he had also obtained an amount of Rs. 5,00,000/- from the father. The plaintiff has not paid any amount for the expense of the father while he was hospitalized. The trees situated in the plaint schedule properties were cut and removed by the plaintiff. The plaint schedule item No. 2 description is not correct. The defendant has 5 ½ cents of property at the immediate western side of the plaint schedule item No.2 property and the said properties are lying contiguously. After the death of the father, the plaintiff had threatened the mother for obtaining the portion wherein the residential building is situated. The mother had thus entrusted the document with respect to the plaint schedule properties to the defendant and the defendant is in possession of the said property. The defendant had sought for partition of the plaint schedule properties several times. However the plaintiff was not ready to do so and was unilaterally taking the income derived from the plaint schedule properties. It is true that Adv. MVS Nampoothiri was acted as a mediator for partition of the property. However the plaintiff sought untenable terms for partition at the stage of mediation and thus the said mediation failed. The plaint schedule property could not be partitioned only due to the acts of the plaintiff. It is false to allege that the plaintiff alone was paying tax for the plaint schedule properties. The defendant was also paying tax for the plaint schedule properties. The defendants have never attempted to forcefully take the documents pertaining to the plaint schedule properties. 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. Is the plaint schedule property partiable?
2. If so, what is the share to be allotted to each parties?
3. Relief and costs?

5. With the afore said pleadings, the parties went to trial. The plaintiff in the case was examined as PW1 and Ext. A1 to A5 were marked. The defendant did not adduce any oral or documentary evidence. Commission report and rough sketch were marked as Ext. C1 and C1(a)

6. Heard the learned counsel for both sides.

7. **Issue No.1 and 2:** These issues are considered together for brevity and for the sake of convenience. It is the case of the plaintiff that he

and the defendant are siblings and that the plaint schedule item No.1 property belonged to their parents and the plaint schedule item No.2 property belonged to their mother. It is contended that the parents are no more and thus the plaint schedule properties are partiable. The defendant had also admitted that the plaint schedule property is partiable. However it is the contention of the defendant that the plaintiff was not ready to partition the properties and that the original of the documents were given to his possession by the mother thus refuting the contention of the plaintiff that the defendant had taken the original of the documents from the possession of the plaintiff during the course of mediation talks.

8. In order to substantiate his contentions, the plaintiff in the case was examined as PW1. PW1 had deposed that the original of the title deeds with respect to the plaint schedule properties are in the possession of the defendant. The defendant has also admitted that the originals are in his possession albeit contending that the same did not come to his possession in the manner stated by the plaintiff. The defendant did not mount the witness box nor did he produce the original of the said documents. However it is not in dispute that the plaint schedule item No.1 property originally belonged to the parents and the plaint schedule item No.2 property originally belonged to the mother and that the parties herein are the co-owners with respect to the plaint schedule property. Ext. A1, A2 and A3 are the tax receipts with respect to the plaint schedule item No.1 property which would show that the tax for the said property were being paid in the name of the parents of the

plaintiff, Sri. Pachupillai and Bhargaviamma. Ext. A4 and A5 are the tax receipts with respect to the plaint schedule item No.2 property which would show that the tax for the said property was being paid in the name of Bhargavi amma who is the mother of the parties.

9. As both parties are in agreement that the plaint schedule property is partiable and as the materials on records would suggest that the plaint schedule properties are co-ownership properties belonging to the plaintiff and the defendant, this court is of the opinion that a preliminary decree of partition can be granted in the present case. The other allegations averred by the parties need not be considered as the same are not material for the purpose of the present suit. It is contended that the parties are Hindus. Thus the plaintiff is entitled to ½ share and the defendant is entitled to ½ share in the plaint schedule properties. Issue No.1 and 2 are found accordingly.

10. **Issue No. 3:**- Based on the discussions held above, the plaintiffs are entitled to succeed and the suit is to be decreed accordingly. 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 concerned are allowed to file appropriate application for drawing up the final decree.

In the result, a preliminary decree is passed as follows:

1. **The plaint schedule item No. 1 and 2 properties are found partiable. The plaintiff is entitled to ½ share and the defendant is entitled to ½ share over the plaint schedule property.**
2. **The plaintiff is entitled to separation of his share.**
3. **The defendant is entitled to separation of his share on payment of requisite court fee.**
4. **Costs of this suit shall come out of estate.**
5. **The parties are allowed to file appropriate application for drawing up the final decree.**

Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court, this the 26th day of November, 2025.

Sd/-
ARAVIND S.J.,
MUNSIFF.

APPENDIX

Exhibits marked for Plaintiff:-

A1 Tax Receipt No. KL03051101457/2018 dated 27.06.2018 of Thiruvalla Village.

A2 Original Tax Receipt No. 2130999 dated 12.03.2012 of Thiruvalla Village.

A3 Tax Receipt No. KL03051104600/2025 dated 10.06.2025 of Thiruvalla Village.

A4 Original Tax Receipt No. 2008011 dated 12.03.2012 of Thiruvalla Village.

A5 Tax Receipt No. KL03051107686/2025 dated 28.10.2025 of Thiruvalla Village.

Court Exhibits:-

C1 Commission Report prepared and submitted by the Adv. Commissioner Adv. Nisha Krishna on 02.11.2020.

C1(a) Rough Sketch prepared and submitted by the Adv. Commissioner Adv. Nisha Krishna on 02.11.2020.

Id/-
MUNSIFF.

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

Fair/Copy of Judgment
in OS No. 326/2020
Dated:26-11-2025.