

IN THE COURT OF THE MUNSIFF, IRINJALAKUDA
Present: Smt.Abeena. C.H., Additional Munsiff
Monday 25th day of August, 2025/ 3rd Bhadra 1947.

O.S.No.660/2022

Plaintiffs:-

- 1 Mini Jose, aged 54, W/o Late Jose, Parappulli House, P.O Kaduppassery, Kaduppassery village, Kaduppassery desom, Mukundapuram Taluk.
- 2 Thomson Jose, aged 33, S/o Late Jose, Parappulli House, P. O Kaduppassery, Kaduppassery village, Kaduppassery desom, Mukundapuram Taluk.
- 3 Anson Jose, aged 27, S/o Late Jose, Parappulli House, P. O Kaduppassery, Kaduppassery village, Kaduppassery desom, Mukundapuram Taluk.
By Advs. A.K Sureshkumar & Sunny K Manjaly.

Defendants

- 1 Ignesium, aged 75, S/o Late Thomas, Parappulli House, P. O Kaduppassery, Kaduppassery village, Kaduppassery desom, Mukundapuram Taluk.
- 2 Davis, aged 68, S/o Late Thomas, Parappulli House, P. O Kaduppassery, Kaduppassery village, Kaduppassery desom, Mukundapuram Taluk.
D1:By Adv. C K Dasan, D2: Exparte.

This suit coming on 02.08.25 for hearing and the court on 25.08.25 delivered the following:-

J U D G M E N T

Suit for partition and separate possession.

2. The gist of averments in the plaint are as follows: The plaintiffs and defendants are Christians by religion and governed by Indian Succession Act. The plaint schedule property was originally acquired by the deceased Parappulli Kunjiyyu Thomas as per Document

No.1625/1958 of Kallettumkara SRO. He executed a Will deed No.37/2003 of Kallettumkara SRO with respect to said property and the property was set apart in favour of his sons Ignatius, Davis and Jose and also reserving life estate to his wife Kunjala, as per E schedule of the Will. On the death of the above said Thomas, the property was absolutely devolved upon Jose (late husband plaintiff and father of remaining plaintiffs) and his brothers Ignatius and Davis, who are the defendants herein jointly. The above said Thomas died on 16.11.2008 and Kunjala died on 22.01.2018. Before death of Kunjala, the husband of first plaintiff died on 01.11.2016. The original of the above said Will is with the defendants and hence. After the death of the above said Thomas and Kunjala, the plaintiffs and defendants became the absolute joint owners in possession of the plaint schedule property and thereafter the plaint schedule property are in the joint possession and ownership of the plaintiffs and defendants. The plaintiffs are entitled to get 1/3 share in the plaint schedule property.

3. After the death of the above said Kunjala, the defendant no.1 cut and removed and sold 2 teak trees worth about ₹4,00,000/- and made the same for his own use. The defendant no.1 alone has been taking yield from the coconut trees and nutmegs etc. in the plaint schedule property. The defendants are also further making attempts to cut and remove the

remaining trees in the plaint schedule property and also committing acts of waste wherein. For better and improvement of plaint schedule properties, it is better to partition the plaint schedule property between the plaintiffs and defendants by metes and bounds. Accordingly, the plaintiffs requested the defendants for partition of the plaint schedule property by metes and bounds many times. Ultimately, the plaintiffs requested the defendants for partition on 20.06.2022, which was also not heeded to by the defendants. Hence, the plaintiffs are without any other go but to approach this Hon'ble Court for appropriate relief and hence this suit.

4. Summons were served to the defendants. 1st defendant filed a written statement traversing the averments in the plaint. As the 2nd defendant remained absent despite service of summons, the suit proceeded ex parte against him.

5. **The contentions of 1st defendant in the written statement are as follows:** All the averments in the plaint, except those which are specifically admitted hereunder, are stoutly denied by the defendants. The husband of first plaintiff and the father of second and third plaintiff, the said Jose had huge financial liability during his lifetime. He had worked as Managing Director of Goodmen Kuris, Irinjalakuda and had enrolled many subscribers to the kuri conducted by the said firm. He had also auctioned

kuri's at a lower rate than and enjoyed the kuri amounts for his own purposes and thereby caused to be a debtor to the firm. Being the eldest brother, on many occasions this defendant helped him to discharge the liabilities caused by the said Jose. So also this defendant had financially helped the said Jose by excavating the soil and sold it from the 22 cents of property of the plaintiff. As such hundreds of lorry loads of soil was removed and sold apart from the trees were standing there. This defendant had paid him for more than ₹ 1,50,000/- by this way and nothing has been repaid so far by the said Jose. There are 39 cents of paddy fields also covered by the Will apart from the plaint schedule properties which had to be set apart equally to this defendant's brother Davis and said Jose. Things being so, on 12.05.2003 the said Jose had written a document in favour of this defendant in his own handwriting with regard to the 1/3 share of the above 39 cents i.e. 13 cents eligible to be set apart to the said Jose will be transferred to this defendant on receiving consideration. As such the said Jose had received ₹2,00,000/- from this defendant as consideration for the plaint schedule properties and possession of the plaint schedule properties was handed over to this defendant on that day. This document was prepared by the said Jose in his own handwriting and was signed by him. As a family arrangement, the preparation and execution of the document was witnessed and signed by

the above said Davis and the mother Kunjala. For raising the consideration amount of ₹2,00,000/-, this defendant had prepared ₹1,25,000/- from his own hand and the balance amount of ₹ 75,000/- was raised by way of a loan from Avittathur Service Co-operative Bank, No.706. For this loan purpose, membership was subscribed by this defendant, the said Jose and the mother Kunjala. A short term loan of ₹25,000/- was availed by each of them and thereafter the total loan amount of ₹75,000/- availed in the name of the above all and interest for that amount was fully repaid by this defendant himself. All these facts are known to the plaintiffs also. On 08.10.2005, this defendant had approached the said Jose and demanded to execute a registered document with regard to the above said 13 cents, but it was declined by him. Then this defendant prepared the land for rubber tree cultivation. This defendant ploughed the above said 13 cents, despite the objection raised by the said Jose and planted 20 rubber saplings there. In the month of August last 2009, this defendant had put up barbed fencing along the western, southern and eastern boundaries of the above said 13 cents. During the lifetime of the said Jose, there was no objection raised by Jose or the plaintiffs who are residing in the adjacent properties. Subsequently, this defendant had set up a fish pond in the said properties in the year 2009 last. On 08.10.2018 also this defendant had approached the plaintiffs to execute the registered deed in favour of the

plaintiff with regard to the above 13 cents, but they were not heeded to demand of this defendant. On 05.07.2022 this defendant had collected granite, metals and rubbles for the paving of tiles in the courtyard of the Tharawad house. The plaintiffs obstructed the workers employed for this and sent away them. Only for the purpose of putting this defendant under pressure and dissuade this defendant from demanding for the registration of the deed for the 13 cents, the plaintiffs filed this suit and an order of prohibitory injunction was obtained under the guise of demand for partition. The suit is not maintainable as it was filed by suppressing true facts. This defendant and sister, who is the widow are residing in the house in the plaint schedule properties. Though, for the purpose of dividing the shares, properties have been measured by the Village Officer and marked the portion. The properties can be partitioned conveniently without damaging or demolishing the existing Tharawad house therein. The plaintiffs have got their own house. This defendant is ready to purchase the share of the plaintiffs at the marketable rate. It is inevitable to provide accommodation to the widowed sister in the house in the plaint schedule properties. This defendant is entitled for costs and same is to be allowed for the meeting of ends of justice. The valuation and the court fees calculated are not correct. There is no cause of action for this suit and hence the suit is liable to be dismissed.

6. On the basis of above rival pleadings, following issues were framed;

1. Did Late Sri. Jose has executed Will Deed No.37/2003 of SRO Kallettumkara?
2. Whether plaint schedule property is partible?
3. Is the plaintiff entitled for a relief of partition plaint schedule property? If yes, what shall be the quantum of share?
4. Is the plaintiff entitled for a relief of permanent prohibitory injunction as prayed for?
5. Reliefs and costs?

7. There is no prayer for a permanent prohibitory injunction, and hence that issue is struck out.

8. The first plaintiff was examined as PW1 and marked Ext.A1 in support of their case. PW2 was also examined from the side of the plaintiffs. Exts.C1 and C1(a) were also marked at the instance of first plaintiff. No oral or documentary evidence was adduced from the side of the defendants.

9. Heard both sides and perused the case records.

10. **Issues 1 to 3:** Since all these issues involves common evidence, for the sake of brevity and avoid repetition of facts, they are dealt together. The case of the plaintiffs is that the plaint schedule property is partible among the parties to the suit, and the plaintiffs are jointly entitled to a one-third share in it. The first plaintiff was examined as PW1, and she deposed in line with her pleadings. As per the pleadings and the evidence of PW1, the plaint schedule property was obtained by the father-

in-law of PW1 by virtue of Deed No.1625/1958 of Kalletumkara SRO. He executed Ext.A1 Will regarding his properties, and as per the E schedule of Ext.A1, he bequeathed the plaint schedule property to his sons Jose (husband of PW1 and father of the other plaintiffs), Ignésious (first defendant), and Davis (second defendant). A life interest in favour of Kunjala, wife of Thomas, was reserved. The father-in-law, Thomas, died on 16/11/2018, and the mother-in-law, Kunjala, died on 22/01/2018. The husband of PW1 died on 01/11/2016. Therefore, as per the terms of Ext.A1, the plaintiffs and defendants are joint owners of the property, and hence the plaintiffs claim partition and separate possession of their share. Though PW1 was thoroughly cross-examined, nothing was brought out to cut at the root of their case.

11. It is settled position of law that execution of Will must be proved as per provisions of Sec.63 of Indian succession Act,1925 and Sec.68 of Indian Evidence Act, 1872. Even the absence of any specific denial of execution of a Will or even an admission of its existence Will not absolve the duty of the propounder of a Will to prove its genuineness and the further duty to disperse all the suspicious circumstances, if any surrounding its execution. The execution of a Will can be held to have been proved when the statutory requirements for proving the Will are satisfied. Under Section 63 of Indian Succession Act, it is provided that the

Will has to be attested by two or more witnesses and each of these witnesses must have seen the testator sign or affix his mark to the Will, or must have seen some other person signing the Will in the presence and by the direction of the testator or must have received from the testator a personal acknowledgement of his signature or Mark or of the signature of such other person; and each of the witnesses has to sign the Will in the presence of the testator. Section 68 of Indian Evidence Act provides that if a document is required by law to be attested, it shall not be used as evidence until one of the attesting witness at least has been called for the purpose of proving its execution, if there be a attesting witness, alive, and subject to the process of court and capable of giving evidence. Although the Indian Succession Act requires that the Will has to be attested by two witnesses, section 68 of Evidence Act permits the execution of a Will to be proved by only one attesting witness being called, but that attesting witness must be in a position to prove the execution. It is essential that the witness should have put his signature *animo attestandi*, that is, for the purpose of attesting that he has seen the executant sign or has received from him a personal acknowledgment of his signature.

12. To prove the execution of Ext.A1, PW2, the scribe who prepared Ext.A1, was examined. He deposed that he knew late Thomas and late Kunjala, and that Ext.A1 was prepared by him as per their

directions. He stated that Thomas signed the Will first, followed by Kunjala. Thereafter, Savy signed as the first attesting witness, and PW2 himself signed as the second attesting witness. PW2 further deposed that he witnessed the signing of the document by Thomas, Kunjala, and Savy, and that Thomas and Kunjala, in turn, witnessed his signature and that of Savy. The evidence of PW2 during his examination-in-chief satisfies the requirements of Section 63 of the Indian Succession Act, which prescribes the mode of execution of a Will. He was not cross-examined on behalf of the defendants. Hence, the execution of Ext.A1 stands proved in terms of law.

13. Although the first defendant filed a written statement stoutly denying the averments in the plaint and pleading certain additional facts, he did not adduce any evidence to prove those additional facts. Similarly, while he thoroughly cross-examined PW1, he failed to disprove the plaintiffs' case.

14. Based on the evidence on record, this Court finds that Ext.A1 is a Will validly executed by late Thomas (father of the defendants, father-in-law of the first plaintiff, and grandfather of the second and third plaintiffs). Accordingly, the plaint schedule property is partible into three equal shares, with the plaintiffs jointly entitled to one share, and the

defendants entitled to one share each. These issues are therefore answered in favour of the plaintiffs.

15. **Issue 5:** In the result,

- **Suit is decreed and preliminary decree for partition is passed as follows;**

1. The plaint schedule property is found partible. The plaint schedule property shall be partitioned into 3 equal shares by metes and bounds of which, the plaintiffs are jointly entitled for 1/3 share and defendants are entitled for 1/3 share each over the plaint schedule property.
2. Shares of defendants shall be allotted to them on payment of requisite court fee.
3. The question of equities could be considered at the time of final decree.
4. Parties are at liberty to file final decree application. If no application is filed for passing final decree within 30 days from today, the office is directed to put up the file for taking steps under Order 20 Rule 18 of Code of Civil Procedure, 1908. Issue notice to plaintiffs and defendants.
5. Costs of the suit shall borne out of estate.

Call on – 08.10.2025

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and revised by me and pronounced in open court on this the 25th day of August, 2025).

sd/-
Abeena.C.H.,
Additional Munsiff.

APPENDIX;-

Plaintiff's Witness :

PW1 08.07.25 Mini Jose.
PW2 15.07.25 Muraleedharan K.K.

Plaintiff's Exhibits :

A1 20.02.2003 Certified copy of will no.37/2003 of SRO,
Kallettumkara.

Court Exhibits

C1,C1(a) Commission report and plan submitted
by Adv. Sony Paul dated 20.07.22.

sd/-
Additional Munsiff.

//True copy//

Additional Munsiff.

Copied by: kvp
Compared by:

