

IN THE COURT OF THE MUNSIF, ATTINGAL
PRESENT: SRI.SANTHOSH KUMAR.N, MUNSIF
FRIDAY 22nd JULY 2022/ 31st ASHATAM, 1944

IA.1/2022 in OS No.139/2022 AND IA.1/2022 in OS No.195/2022

IA.1/2022 in OS No.139/2022

Petitioners/ Plaintiff:-

1. Manju.D, D/o Devadas, aged 47 years, Kulathil Veedu, Anathalavattom P.O, Sarkara, Chirayinkeezhu
2. Manu, aged 49 years, D/o Devadas, Kulathil Veedu, Anathalavattom P.O, Sarkara, Chirayinkeezhu

By Adv:- Sri.Bilahari.G.R.

Counter Petitioners/ Defendants:-

1. Sunitha.S, aged 57 years, D/o Sukumaran, Kattil Puthen Veedu, AMC XXIX/165, Attingal P.O, Attingal Municipality, Avanavanchey Village.
2. Athira.V.S, aged 31 years, D/o Sunitha, Kattil Puthen Veedu, AMC XXIX/165, Attingal P.O, Attingal Municipality, Avanavanchey Village.
3. Sunil.S, aged 52 years, S/o Sukumaran, Sunil Land, Near Elamba School, Elamba.
4. Nandumol, aged 32 years, D/o Sulatha, Punnavila Veedu, Chumaduthangi, Mudapuram P.O, Chirayinkeezhu.
5. Ashi, aged 22 years, D/o Sulatha, Punnavila Veedu, Chumaduthangi, Mudapuram P.O, Chirayinkeezhu.

By Adv:-Sri.Thattathumala.S.Anilkumar.

IA.1/2022 in OS No.195/2022

Petitioner/ Plaintiff:-

Athira.V.S, aged 31 years, D/o Sunitha, AMC No.29/165, Kattil Puthen Veedu, Municipality Attingal, Attingal P.O, Chittattinkara Desom, Avanavanchey Village, Chirayinkeezhu Taluk,Thiruvananthapuram District.

By Adv:-Sri.Thattathumala.S.Anilkumar.

Counter Petitioners/ Defendants:-

1. Manju, aged 48 years, D/o Suprabha, Kulathil Veedu, Anathalavattom, Kadaikkavoor P.O, Chirayinkeezhu Village, Chirayinkeezhu Taluk, Thiruvananthapuram District.
2. Hani, aged 23 years, D/o Manju, Kulathil Veedu, Anathalavattom, Kadaikkavoor P.O, Chirayinkeezhu Village, Chirayinkeezhu Taluk, Thiruvananthapuram District.
3. Hari, aged 19 years, S/o Manju, Kulathil Veedu, Anathalavattom, Kadaikkavoor P.O, Chirayinkeezhu Village, Chirayinkeezhu Taluk, Thiruvananthapuram District.

By Adv:- Sri.Bilahari.G.R.

These petitions having been finally heard on 04.07.2022 and the court on 22.07.2022 passed the following:

COMMON ORDER**I.A.01/2022 IN O.S.139/2022:**

This is a petition filed under Order XXXIX, Rule -1 r/w Section 94 of CPC.

2. **The petition averments in brief are as follows:** Petitioner is the plaintiff in the original suit. The original suit is filed for declaration of will and sale deed as null and void, partition of petition schedule properties and for consequential injunction.

3. The petition is filed for an on behalf of the 2nd petitioner also. Petitioners are the children of Suprabha, one of the daughters of late Sukumaran. 1st respondent/defendant Sunitha, 3rd respondent/defendant Sunil, Sulatha and Sudharman are the other children of late Sukumaran. Sulatha is no more. Sudharman is unheard for the last 50 years. 2nd respondent/defendant is the daughter of Sunitha. 4th and 5th respondent/defendants are the children of late Sulatha.

4. Late Sukumaran owned various properties. One cent of property comprised in survey No.679/2-2 belonged to him. It is shown as 1st item in the petition schedule.

Another 2 ¼ cents of property obtained by him by virtue of sale deed No.2422/1962 of SRO, Chirayinkeezhu comprised in survey No.679/2-6 of Chirayinkeezhu village is shown as the 2nd item. In addition to the above, said Sukumaran obtained 2.83 ares of property in survey No.679/2-3, 0.40 ares in survey No.679/2-2 and 0.91 ares of property in survey No.679/2-5 vide Exchange Deed No.1627/1966 dated 11.05.1966. The above properties are shown as item No.3 to 5 in the petition schedule respectively. Thus plaint items altogether forming a contiguous plot is having 13.5 cents of property.

5. Sukumaran died in June 2001. With the death of Sathyavathi, W/o Sukumaran, Suprabha (mother of the plaintiffs), 1st and 3rd defendants and Sulatha became the co-owners of the plaint item property. Mother of the petitioners/plaintiffs Suprabha and her sister Sulatha are no more. Plaintiffs and defendants 4 and 5 are their legal representatives. Hence plaintiffs and defendants are the co-owners of the plaint schedule properties. Plaintiffs are entitled for ¼ share. Respondents/defendants 4 and 5 together entitled for one share. 1st and 3rd defendants are also entitled for one share each. Hence the petition schedule properties are liable to be partitioned.

6. Late Suprabha was residing in the house building in the petition schedule properties along with the petitioners. Mother of the petitioner/plaintiffs looked after their aged parents Sukumaran and Sathyavathi. In 2016, 1st defendant along with the mother Sathyavathi filed O.S.59/2016 for obtaining a decree against the petitioner and her mother in order to restrain them from making any constructions in the petition schedule properties under the strength of a will alleged to be executed by late Sukumaran in favour of the 1st defendant. However, the suit was abandoned later. Late Sulatha and mother of the plaintiff was desirous of filing suit for setting aside the will, but it was not preferred as

Sathyavathi, the mother, was alive and the will did not come in to effect. Since the 1st plaintiff was an estranged wife, she had to reside along with her mother in the plaint schedule property.

7. Plaintiffs demanded the partition of the petition schedule properties. The defendants were not amenable to the demand. They claimed that the Will has come into force and thereafter the 1st defendant has executed a sale deed in favour of the 2nd defendant transferring her title and possession in the petition schedule property. The 1st respondent / defendant never obtained exclusive right in the petition schedule property to execute a sale deed pertaining to the petition schedule property, in favour of the 2nd respondent/defendant. The alleged Will is obtained by fraud, coercion and it is null and void abinitio. There is unfair and unjust exclusion of legal heirs of late Sukumaran. Hence the alleged will is executed under suspicious circumstances. It is executed at a time when the plaintiffs and their mother were residing in the petition schedule properties. Late Sukumaran was sick, bed ridden and aged 85 years. He was physically and mentally unable to execute a will. Hence it is created under compulsion. There are served factual errors in the will which would indicate that it was prepared on haste. It was not the last will of late Sukumaran.

8. As the 1st respondent/defendant has not obtained any right under the Will, the sale deed executed in favour of 2nd respondent/defendant is also void. Hence both the Will and sale deed are to be declared null and void. As the petitioner is entitled for ¼ share in the petition schedule properties, the petition schedule properties are to be partitioned by metes and bounds.

9. The petitioners/plaintiffs have been residing in the house in the petition schedule property since her birth. The respondents/defendants are trying to eject the petitioners/plaintiffs from the petition schedule properties and to take exclusive possession of the property. Respondents/defendants have no any right to eject the petitioner from the properties as they are entitled for one share in the property. Hence the respondents/defendants are to be restrained from dispossessing the petitioners from the petition schedule property or to commit any act of waste therein or induct strangers in the property until the disposal of the suit. Hence this petition.

10. **The averments in the objection in brief are as follows:** The petition is not maintainable either in law or on facts. The petition is filed intending to harass the respondents and to make it as a tool for bargain. It is true that mother of the petitioners resided in the family house, Kulathil Veedu for sometime. After the marriage of the 1st petitioner she has been living with family at her husband's house at Chavarcode. 2nd petitioner is also residing away from the petition schedule property. As a matter of fact, father of the 1st respondent executed a registered Will No.25/2000 in favour of the 1st respondent bequeathing the petition schedule properties. After the death of the parents of the 1st respondent the Will came into force and thereafter the property has been mutated in the thandapper account of the respondent after complying with the stipulations contained in the said will. Thereafter, the 1st respondent executed a sale deed in respect of the petition schedule property in favour of her daughter who is the 2nd respondent vide sale deed No.1094/2021. Hence the petition schedule properties including the house building belongs to the 2nd respondent subject to certain reservations. The petitioners do not have any manner of right in the petition schedule properties. The contention that O.S.59/2016

filed by the 1st and 2nd respondents against the 1st petitioner and her mother was abandoned is factually incorrect. The suit was filed when the petitioners tried to carry out maintenance work in the residential building which was bequeathed to the 1st respondent by her father. The petitioner and her mother promised to the 1st respondent that such works would not be attempted further and there upon the suit was decided not to be contested. Mother of the petitioners was permitted to reside in the house building in the petition schedule property for the sisterly concern. She was aware of the execution of the Will in favour of the 1st respondent and she did not dispute it in her life time. Another daughter of late Sukumaran, Sulatha also did not dispute the will. Late Sukumaran, father of the 1st respondent had assigned 7 cents of property each to the mother of the 1st petitioner and 3rd respondent. Will also contained stipulation to give Rs.10,000/- each to Sulatha and Sudharman, two other children of late Sukumaran. The respondents have complied with the above stipulations and therefore the petitioners have no right to challenge the validity of the above will. Late Sukumaran was physically and mentally sound enough to execute the will. The allegation that it was obtained by fraud, coercion and undue influence are false and baseless. The contention that the survey numbers and deed numbers referred in the will are incorrect and therefore it was prepared in haste is denied. The revenue authorities have mutated the property and accounted it in the thandapper account of the 1st respondent and therefore the contentions are without any base. The will was executed in the presence of witnesses who are competent to attest the will. Since the petition schedule property exclusively belongs to the 2nd respondent, the petition schedule properties are not available for partition. The petitioners are illegally occupying the house building in the petition schedule property and the suit is filed only

with an intention to continue with the illegal possession. Petitioners have no right to dictate that it should not be alienated or third parties should not be inducted in it. The petitioners have no prima facie case in their favour. No hardship would cause to the petitioners if the petition is rejected. Hence the petition is liable to be dismissed.

I.A.01/2022 IN O.S.195/2022:

11. **The petition averments in brief are as follows:** Petitioner is the plaintiff in the original suit. The original suit is filed for eviction and recovery of possession.

12. The petition schedule property having an extend of 3 ares 60 sq. metre property with a house building having door No.18/381 in Block No.12, re-survey No.226/7 of Chirayinkeezhu village belongs to the plaintiff by virtue of the sale deed No.1094/2021.

13. Originally the plaint schedule property belonged to the grandfather of the petitioner who executed a registered will with respect to the petition schedule property in favour of the petitioner's mother reserving right of grandmother to enjoy improvements. With the death of both grand parents the will was acted upon on complying with the stipulations in the Will, the petition schedule property devolved upon the mother of the petitioner. The petitioner obtained the petition schedule property from her mother in 2021. The house building in the petition schedule property being the tharawad house, the defendants were also residing in it. The names of the defendants also happened to be included in the ration card.

14. 1st respondent/defendant is the daughter of the sister of the petitioner's mother. 2nd and 3rd respondents/ defendants are the children of 1st defendant. They have no any manner of right in the petition schedule property. The 1st respondent/ defendant is permanently

residing along with her children in the house of her husband at Palayamkunnu in Varkala. While the mother was alive, the defendants used to pay visit to the home and being cousins the plaintiff/petitioner did not objected it. While so the mother of the 1st defendant died in the tharawad house. The defendants were reluctant to leave the house in the petition schedule property after the funeral ceremonies. Petitioner through mediators demanded the respondents to vacate the house in the petition schedule property, but the respondent/defendants did not concede to the demands and after lodging a caveat they filed O.S.139/20 claiming right in the partition of the property. The petition schedule property is not partible.

15. The respondent/defendant obstruct the petitioner from entering the petition schedule property and causes damages to it. The petitioner has a strong prima facie case. Hence the respondent/ defendants are to be restrained from obstructing the petitioner in the possession and enjoyment over the petition schedule property or commit any act of waste therein. Hence the petition.

16. The respondents did not file any objection.

17. Heard.

18. Based on the above contention, the following points were raised for consideration:

1. Whether the petitioners in I.A.01/2022 in O.S.139/2022 and I.A.01/2022 in O.S.195/2022 are entitled to get an order as prayed for ?

2. Order ?

19. Petitioners in I.A.01/2022 in O.S.139/2022 has produced Ext.A1 to A10 in support of their contention. The commissioner has furnished report and eye sketch which are marked as Ext.C1 and C1(a). Respondent who are the petitioners in I.A.01/2022 in O.S.195/2022 produced certified copy of sale deed No.1094/2021 and basic tax receipt dated 26.10.2021 pertaining to the petition schedule property paid in the name of the 2nd respondent.

20. Ext.A1 is the certified copy of sale deed No.2903/1960. Ext.A2 is the certified copy of sale deed No.2422/1962. Ext.A3 is the certified copy of exchange deed No.1627/1966. Ext.A4 is the certified copy of Will deed No.25/2000. Ext.A5 is the certified copy of sale deed No.1094/2021. Ext.A6 is the original power of attorney executed by Sulatha. Ext.A7 is the certified copy of judgment in O.S.59/2016. Ext.A8 is the copy of ration card. Ext.A9 is the copy of Aadhar card in the name of 1st petitioner and Ext.A10 is the copy of 1st page of SSLC book in the name of 1st petitioner.

21. **Point No.(1):** The 2nd respondent has filed O.S.195/2022 against the 1st petitioner and her children contending that the petitioners in I.A.01/2022 in O.S.139/2022 are illegally possessing the petition schedule property and house building therein. In I.A.01/2022 in O.S.195/2022 the petitioner has prayed for restraining the respondents who are the petitioners herein from causing any waste in the petition schedule property.

22. The commissioner in the Ext.C1 and C1(a) report and plan has given detailed description of the lie, nature and extend etc of the plaint schedule properties including the house building therein. However, the commissioner has not noted the residence of the 1st petitioner and family in the petition schedule property. During hearing, the learned

counsel for the petitioners and respondents contended that a status quo order in the both petitions would be sufficient until the adjudication of the matter on evidence.

23. From the averments in the I.A.01/2022 in O.S.195/2022, it is clear that the petitioners herein are in possession of the house building in the petition schedule property. Whether the petition schedule properties have been bequeathed to the 1st respondent who in turn assigned the same in favour of the 2nd respondent, whether the said will is caused by fraud, coercion or undue influence or whether the petition schedule properties are available for partition etc are to be adjudicated on merit. As the petitioners are in possession of the properties and are residing therein and that the respondents are claiming title over the same property based on a will and prays not to commit any act of waste in the property it is proper to order to maintain status quo by both parties until the adjudication of matter on merit.

23. **Point No.(2):** In the result, both the petitions are allowed in part as follows.

The respondents in I.A. 01/2022 in O.S.139/2022 are restrained from disposing the petitioner from the petition schedule property not otherwise than law and the respondent in IA 01/2022 in O.S. 195/2022 are restrained from committing any act of waste in the plaint schedule property until further orders.

Dictated to the Confidential Assistant, transcribed and typed by her corrected and pronounced by me in open Court on this the 22nd day of July, 2022.

Sd/-
SANTHOSH KUMAR.N,
MUNSIFF

Appendix:-**Exhibits marked for the Petitioner/ Plaintiff:-**

A1	12.07.1960	Certified copy of sale deed No.2903/1960 of SRO, Chirayinkeezhu
A2		Certified copy of sale deed No.2422/1962 of SRO, Chirayinkeezhu
A3	11.05.1966	Certified copy of exchange deed No.1627/1966 of SRO, Chirayinkeezhu
A4	17.05.2000	Certified copy of will deed No.III 25/2000 of SRO, Chirayinkeezhu
A5	01.10.2021	Certified copy of sale deed No.1094/21 of SRO, Chirayinkeezhu
A6	02.02.2016	Original Power of Attorney executed by Sulatha
A7	27.05.2017	Certified copy of Judgment in OS.59/16
A8	19.11.2019	Copy of ration card No.1104025375 of Suprabha
A9		Copy of Aadhar card of 1 st petitioner Manju.D.
A10		Copy of 1 st page of S.S.L.C book in the name of 1 st petitioner

Exhibits marked for the Counter Petitioner/Defendant:- Nil**Court Exhibits:-**

C1& C1(a)	21.05.2022	Commission report and rough sketch prepared by Adv.Pooja.A
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Witness for both sides:- Nil

Id/-
MUNSIF

// True copy//

Typed by: Sheena.K
Compared by:

MUNSIF