

IN THE COURT OF THE SUB JUDGE, SULTHANBATHERY

Present: Smt.Sreeja Janardhanan Nair, Sub Judge

Friday, the 10th day of November, 2023
 19th day of Karthika, 1945

ORIGINAL SUIT No.82/2022

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| <ol style="list-style-type: none"> 1. Sarfoona, Aged 52 years, W/o. Muhammed,
Poozhithara House, Puthoorvayal Post,
Kottappadi Village, Vythiri Taluk,
Wayanad District, Pin: 673 121. 2. Raihanath, W/o. Abdul Nazer, Aged 50 years,
Kattumkadavath House, Neduva P.O.,
Parappanangadi Village, Thirurangadi Taluk,
Malappuram District, Pin: 676 303. | } | Plaintiffs |
| V/s. | | |
| <ol style="list-style-type: none"> 1. Kadeeja, Aged 78 years, W/o. Kattumkadavath
Hamza, Kattumkadavath House, Odathodu,
Chundale Post, Vythiri Taluk, Wayanad District,
Pin: 673 123. 2. Moosakutty, Aged 54 years, S/o. Kattumkadavath
Hamza, Kattumkadavath House, Odathodu,
Chundale Post, Vythiri Taluk, Wayanad District,
Pin: 673 123. 3. Jameela, Aged 56 years, W/o. Aboobacker,
Parakkal House, Manjappara, Narikkundu Post,
Nenmeni Village, Sulthanbathery Taluk,
Pin: 673 593. 4. Ramla K.K., Aged 50 years, W/o. Hamsa,
Kariyath Valappil House, Nellarachal Post,
Ambalavayal Village, S.Bathery Taluk,
Wayanad District, Pin: 673 593. | } | Defendants |

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| <p>5. Nasser K.K., Aged 45 years, S/o. K.Hamza,
Kattumkadavath House, Manjadi, Malavayal Post,
Poomala, Nenmeni Village, S.Bathery Taluk,
Wayanad District, Pin: 673 593.</p> <p>6. Basheer K.K., Aged 42 years, S/o. K.Hamza,
Kattumkadavath House, Odathodu, Chundale Post,
Vythiri Taluk, Wayanad District,
Pin: 673 5123.</p> <p>7. Rasiya K.K., Aged 37 years, W/o. Jabbar,
“ Chandrakantham”, Ambalavayal Post & Village,
S.Bathery Taluk, Wayanad District, Pin: 673 593.</p> | } | Defendants |
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This Original Suit is coming on this day for hearing before me in the presence of Sri. P.K. Dinesh Kumar, Advocate for plaintiffs and Defendants called absent, set exparte and on the same day the court delivered the following:-

JUDGMENT

The suit is one for partition.

2. **The plaint averments in brief are as follows: -** The plaintiffs are the daughters of Kattumkadavath Hamsa, born in his 2nd wife, then deceased Fathima. The defendant No.1 is the 1st wife of the Kattumkadavath Hamsa. Defendants No.2, 5 and 6 are the son and defendants No.3, 4 and 7 are daughters born to Kattumkadavath Hamsa in his first wife Khadeeja. Late Kattumkadavath Hamsa had properties covered by deed No. 505/2001 of SRO

Kalpetta situated in R.S No.15/9 (block No.27) (S.No.2015/4) and measuring 0.0160 H and two storied residential house bearing No.MP XVII/74(c) and shop rooms bearing No.MP XVII/74(A) and (B) (new room Nos.MP XVIII/90, 90A, 91 and 92) at Odathodu, in Kottappadi Village, Meppadi Panchayath. Kattumkadavath Hamsa demised on 13.08.2018. After demise the properties belonged to him and more fully described in the plaint schedule devolved upon the plaintiffs and defendants under Islamic law of inheritance and is in the joint possession, co-ownership but in the control of the defendant No.1 and 2. It is submitted that since November-2021 the defendants stopped sharing of rent from the shop rooms and even in-spite of repeated demands the defendants were also evading to effect partition of the property by metes and bounds. Plaintiffs and defendants No.4 and 7 had moved Odathodu Nasrathul Islam Jamaa'th Committee seeking intervention and partition of the properties left by Kattumkadvath Hamsa in law of Sharia Principles. Though discussions and deliberations were there as initiated by the plaintiffs, no acceptable, lawful, propositions came out and property is still in the control of defendants No.1 and 2, but in the co-ownership and joint possession of the plaintiffs and defendants No.3 to 7. Defendant No.1 and 2 have no right to hold the property any further jointly. The defendants 3 to 7 are also aspirants in the relief in the suit. It was in the circumstances the plaintiffs caused a lawyer notice on 16.01.2022 to the defendants 1 and 2 demanding partition of the properties by metes and bounds.

Likewise, the defendants 3 to 7 also caused a lawyer notice to the defendants No.1 and 2 demanding partition of the scheduled property left by Kattumkadvath Hamsa. Both the notices were served on the defendants No.1 and 2 and they also furnished a reply stating false and frivolous contentions, negating the demand for partition in Sharia Law. Hence, the suit.

3. Though the defendants except defendant No.5 & 6 entered appearance, not turned up thereafter. Substituted service was effected against defendants No.5&6. Name of all defendants called, absent and they were set *ex parte*.

4. The plaintiff No.2 has filed chief affidavit in lieu of chief examination in tune with plaint averments as PW1 and Exts.A1 to A5 were marked in support of his case. Ext.A1 is the certified copy of document No. 505/2001, Ext.A2 is the lawyer notice dated 16.01.2022, Exts A3 and A3(a) are the postal receipts of Ext.A2, Exts.A4 and Ext.A4(a) are the acknowledgement cards of Ext.A2 and Ext.A5 is the reply notice dated 15.03.2022. The evidence of PW1 and Ext.A1 to A5 remain unchallenged. There is absolutely no contra evidence to challenge the evidence of PW1. The unchallenged evidence of PW1 and the documents proved the case of plaintiff. Hence I find that the plaintiffs are succeeding in proving their case by adducing sufficient

evidence and producing documents. Accordingly the suit is decreed.

In the result, the suit is decreed and a preliminary decree is passed as follows:-

1. The plaint schedule property shall be divided into 88 equal shares by metes and bounds and the plaintiffs are entitled to get 7 shares each, defendant No.1 is entitled to get 11 shares and defendants No.2, 5 and 6 are entitled to get 14 shares each and defendants No.3, 4 and 7 are entitled to get 7 shares each.
2. The equity and reservation with regard to the plaint schedule property is relegated to the stage of final decree.
3. The costs of the suit shall come out of estate.
4. The suit is adjourned for taking steps under Order XX Rule 18 of CPC.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court, this the 10th day of November, 2023)

Sd/-

SUB JUDGE

Appendix:

Plaintiff's Witness:-

PW1 - 06.11.2023 - Raihanath K.K

Plaintiff's Exhibits:-

A1 - 19.02.2001 - Certified copy of Jenmam assignment deed
No.505/2001

A2 - 16.01.2022 - Lawyer notice.

A3 - 27.01.2022 - Postal Receipt.
A3(a)- 27.01.2022- Postal Receipt.
A4 - 29.01.2022 - Acknowledgment Card.
A4(a) - 29.01.2022 - Acknowledgment Card.
A5 - 15.03.2022 - Reply notice.

Defendants' Witness & Exhibits:- - Nil.

Sd/-
SUB JUDGE

Typed by : Subha V.K
Compared by : Haseena K.A.