

IN THE COURT OF THE MUNSIFF-MAGISTRATE, SULTHANBATHERY

Present: Smt.Noorunnisa P., Munsiff-Magistrate

Tuesday, the 5th day of September, 2023
14th day of Bhadra- 1945

ORIGINAL SUIT No.46/2023

Benny, S/o.Late Chacko, Aged 52 years,
Vennampadathil House, Alathoor,
Sasimala Post, Padichira Village,
Sulthanbathery Taluk, Pin: 673579,
Ph:9539393785.

Plaintiff

V/s

1. Elikutty, Aged 78 years, D/o.Late Chacko,
Puthuparambil House, Sasimala Post,
Padichira Village, Sulthanbathery Taluk,
Pin: 673 579.
2. Thomas V.C., S/o.Late Chacko,
Aged 74 years, Vennampadathil House,
Alathoor, Sasimala Post, Padichira Village,
Sulthanbathery Taluk, Pin: 673 579.
3. Cheriyan, S/o.Late Chacko, Aged 69 years,
Vennampadathil House, Alathoor,
Sasimala Post, Padichira Village,
Sulthanbathery Taluk, Pin: 673 579.
4. Chacko V.C, S/o.Late Chacko,
Aged 63 years, Vennampadathil House,
Alathoor, Sasimala Post, Padichira Village,
Sulthanbathery Taluk, Pin: 673 579.

Defendants

This original suit is coming on this day for hearing before me in the presence of Sri.P.T.Surendran, Advocate for the plaintiff and defendants' name called, absent, set exparte and on the same day the court delivered the following:-

JUDGMENT

The suit is for declaration of title on the basis of Will.

2. Plaintiff averments are as follows:- The plaintiff schedule property along with other properties assigned to Mr.Chacko as per the certificate bearing No.317/1980 by the Kalpetta Land Tribunal, who is the father of both the plaintiff and the defendants. Mr.Chacko has executed and registered a Will No.22/1999 of Sub Registrar's Office, Pulpally on 12.03.1999 with respect to those properties. After his demise on 08.04.2003, though the plaintiff schedule property devolved to his wife namely Elikutty. She died on 12.12.2007. After her demise by virtue of the aforesaid will, the plaintiff schedule property devolved to the plaintiff. Since then, plaintiff is in the exclusive possession and ownership of the plaintiff schedule property. However, there is a specific stipulation in the 'Will' regarding purchase of '50' cents of land for one of the brothers of the plaintiff namely Mr. Joseph, who has not been seen since 1984, by the plaintiff along with other siblings on the event of his return. There is another stipulation in the will to look after one Mr. Cheriyan, who is the brother of the father of the plaintiff until his death. He died on 12.08.2008 and Mr. Joseph has not returned so far. Though earnest efforts were taken by the plaintiff and other relatives, he could not find out till date. In these scenario, the plaintiff could not alienate the plaintiff schedule property due to the above described stipulations in the will. Hence this suit is for declaration of title of the plaintiff over the plaintiff schedule property by virtue of will bearing No. 317/1980.

3. Though summons were served to the defendants, they preferred to be absent and set exparte.

4. On the day of evidence, the plaintiff was present and filed a proof affidavit in tune with the averments in the plaint and Exts.A1 to A5 were marked on the side of the plaintiff.

5. Heard learned counsel for the plaintiff. Ext.A1 is the Will bearing No. 22/99 of Sub Registrar's Office, Pulpally. Ext.A2 is the copy of the death certificate of Mr.Chacko. Ext.A3 is the copy of the death certificate of Mr.Cheriyann and Ext.A4 is the copy of the death certificate of Smt.Ealikutty. Ext. A5 is the family membership certificate. It is true that plaintiff has filed a proof affidavit in tune with the plaint and it remained unchallenged. However Ext.A1 is not proved. Mere marking of a document is not as proof. Without proving Ext.A1, this court cold not grant a decree of declaration as sought for. In the result, suit dismissed.

Considering the facts of the case, no order as to costs.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court this the 5th day of September 2023)

MUNSIFF-MAGISTRATE

Appendix:-

Plaintiff Witness :

PW1 - 26.07.2023 - Benny

Plaintiff's Exhibits :

A1	-	12.03.1999	-	Will No.22/99.
A2	-	19.04.2003	-	Death Certificate of Chakko
A3	-	25.08.2008	-	Death Certificate of Cheriyann
A4	-	18.12.2007	-	Death Certificate of Ealikutty.

A5 - 19.01.2023 - Family Membership Certificate.

Defendant's Witness and Exhibits : Nil.

Court Witness and Court Exhibits : Nil.

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Typed by : Arsha Joy

Compared by : Preethi P.B.