

IN THE COURT OF THE SUBORDINATE JUDGE OF THALASSERY

Present: Smt. Sruthy M., Civil Judge(Senior Division)/

Addl. Subordinate Judge, Thalassery.

Saturday, the 28th day of February, 2026/09th Phalguna, 1947

APPEAL SUIT No. 40 of 2022

Valsala.K.K, D/o. Krishnan Nair,	]	
aged 56 years, House Wife, residing at	]	Appellant/
Vazhathadathil House, Kodiyei amsom	]	Plaintiff
desom, P.O. Paral, Thalassery Taluk.	]	

Vs

Rajeevan.K.K, S/o. Krishnan Nair, aged 56	]	
years, Ex Service Man, residing at Kuniyil	]	
Katil House, Kodiyei amsom desom,	]	Respondent/
P.O. Paral, through Power of Attorney Holder	]	Defendant
Padmini Amma.K, D/o. Raman Nair, aged 80	]	
years, No occupation, residing at Kuniyil	]	
Katil House, (Krishnalayam), Kodiyei amsom	]	
desom, Thalassery, as per order in IA.	]	
2147/2012 dated. 06.02.2013.	]	

Appeal filed against the Judgment and Decree dated 08.06.2022 on the file of Munsiff Court, Thalassery made in OS No. 326/2010 under section 96 Order XLI Rule 1 of Civil Procedure Code.

OS No. 326/2010

Valsala.K.K	]	Plaintiff
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Vs

Rajeevan.K.K	]	Defendant
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This appeal coming on this day for hearing before me, in the presence of S/.K. K.Rethnakumar, N.K. Sreekumar and Shahana

Shirin.N.P, Advocates for the Appellant; S/Sri.V.P. Anil and Zeeshan Ali, Advocates for the respondent; and the court delivered the following:

J U D G M E N T

The appeal challenges the decree and judgment of the Munsiff Court, Thalassery, in OS 326/2010. The suit sought fixation of boundaries, mandatory injunction, and permanent prohibitory injunction.

2. The plaint schedule property originally belonged to Othayandara Mena Raman Nair, grandfather of both plaintiff and defendant. He assigned it to his wife, Ekkaliyil Madhavi Amma—their grandmother—via Registered Assignment Deed No. 1076/1956 of the SRO. Madhavi Amma acquired jenmam rights through Registered Assignment Deed No. 1352/1962 of the SRO. She executed a Will on 17.11.1996, bequeathing Plaint A-schedule property to the plaintiff and Plaint B-schedule property to the defendant, while reserving income rights for her daughter, Padmini Amma, until Padmini's death. Madhavi Amma died on 16.09.2002, activating the Will. The properties devolved accordingly, with plaintiff and defendant in possession. As Plaint A and B schedules formed a single holding without demarcation, the plaintiff sought the defendant's co-operation to separate them.

Upon his refusal—despite a registered lawyer’s notice—the suit ensued. The defendant occupied the house on Plaintiff A property; the plaintiff demanded vacation for her own use, alongside permanent injunction against interference, mischief, or tree felling. The Will was made freely, in sound mind, as her last testament—not overridden by intestacy or Padmini’s claims. Any document by Padmini, including Deed No. 1419/2009 of SRO Chokli, is void ab initio.

3. The defendant admits the property belonged to late Madhavi Amma but denies her Will’s execution, alleging forgery by the plaintiff to seize his share. He claims absolute ownership and possession of both schedules via Assignment Deed No. 1419/2009 from his mother, Padmini Amma. Post-Madhavi’s death, the property devolved intestate to Padmini, who cleared a Kodiyeri Service Co-operative Bank loan secured against it and later mortgaged it to Kannur District Co-operative Bank (Manjodi) to aid the plaintiff’s daughters’ marriages. Under family settlement, the defendant purchased it for consideration and enjoys exclusive possession. He denies receiving notice (attributing refusal to misrepresentation) and calls the suit baseless, as the plaintiff

resides elsewhere. Non-joinder of Padmini Amma—a necessary party as heir—warrants dismissal.

4. The issues that arose for consideration before the trial Court were:

- 1) Whether the Will was a forged one?,
- 2) Whether the suit was bad for non-joinder of necessary parties?
- 3) Whether the plaintiff was entitled to get fixation of boundary as prayed for?
- 4) Whether the plaintiff was entitled to get a decree of mandatory injunction as prayed for?
- 5) Whether the plaintiff was entitled to get a decree of permanent prohibitory injunction as prayed for?
- 6) Relief and costs?

Additional issue framed was:

- 7) Whether, the unregistered Will dated 17.11.1996 executed by Madhavi Amma was true, genuine and valid?

5. PW1 to PW4 were examined and Exhibit A1 to A8 were marked and DW1 and DW2 were examined and Exhibit B1 to B6 were marked. Exhibit B1 was marked after confronting PW1. Exhibit B2 to B6 were marked through DW2. Exhibit A6 was

marked confronting DW1 and Exhibit A7 and A8 were marked confronting DW2. Exhibits C1 to C4 were marked as court exhibits and Exhibits X1 to X5 series were also marked.

6. After hearing all parties, the trial court found that the defendant claimed ownership and possession of the Plaintiff A and B schedule properties based on Exhibit B4 assignment deed, executed by Padmini Amma after the properties allegedly devolved upon her following Madhavi Amma's death. Even on the defendant's version, Padmini Amma lacked rights over the property, rendering her non-essential to the proceedings. Thus, the issue of non-joinder of a necessary party was ruled in the plaintiff's favour.

7. Exhibit A1 was an unregistered Will, propounded by PW1 (plaintiff). PW2 was the first attesting witness, PW3 the second, and PW4 the scribe. All three (PW2-PW4) testified to its execution. PW2 confirmed seeing Madhavi Amma sign it while in sound health; PW3 and PW4 corroborated this. The defendant's counsel argued that the propounder must explain suspicious circumstances beyond mere attestation proof. The defendant first questioned the attesting witnesses' credibility due to limited acquaintance with Madhavi Amma, though law requires no prior

familiarity. PW3's cross-examination revealed his conviction in an abkari case; the court deemed it implausible that Madhavi Amma would choose such a witness. Exclusion of legal heir Padmini Amma was deemed suspicious. Exhibit A6 (family deed) showed no prior understanding allocating grandmother's properties to grandchildren, with no paternal shares allotted to plaintiff or defendant which was unsupported by evidence. PW1 claimed family-wide knowledge of the Will, yet Madhavi Amma selected PW2–PW3 despite PW3's notoriety.

8. Execution venue discrepancies arose when it was deposed by PW2 placing it at PW4's office upstairs from Indian Coffee House opposite BEMP School; PW3 said opposite BEMP School; PW4 said opposite the electricity office, with BEMP School 200 meters away. This contradiction undermined consistency as per trial court. PW4 testified Madhavi Amma visited with PW3, dictated terms which were noted and typed, and signed next day with witnesses she brought—yet PW4 knew PW2's details, while PW3 said no questions were asked of him. Execution fell on a Sunday; PW4 kept office open, but others were unsure about nearby shops. This was deemed non-suspicious by the trial court. Madhavi Amma died in 2002; but the suit filed in 2010. Plaintiff

delayed action on Exhibit A1, claiming grandmother handed it over but Village Officer refused tax remission. PW1 admitted Madhavi Amma's unpaid loan (Exhibit X1 application; B2 guarantee) taken for her brothers. This was unmentioned in Will, despite bequeathing properties, with no debt discharge directions without any plausible explanation given. Exhibit B3 showed Padmini Amma cleared it, securing bank release in her favour. Post 2002, allowing Padmini to avail loan on the property, while living with PW1, strained credulity. PW1's late awareness claim was improbable. An 8 year wait for seeking vacation from the building in the property, which was not even mentioned in Exhibit A3 notice which focused solely on boundary demarcation, rendered mandatory injunction an afterthought as per the trial court. For these reasonable suspicions raised Exhibit A1 was found non-genuine as plaintiff failed to prove. Remaining issues of boundary demarcation, and injunctions failed accordingly. Absent valid Will, properties devolved intestate to Padmini Amma; and defendant gained absolute title via Exhibit B4 from her. Plaintiff held no rights; and so, the suit was dismissed with costs to defendant.

9. Aggrieved, plaintiff appealed, urging reversal as trial court erred on law, evidence, and probabilities. Defendant never

disputed testator's signature on Exhibit A1; cited "suspicious circumstances" which were legally untenable. Court misappreciated witness depositions, conflated execution with registration, and ignored Sunday operations for professionals. No bar exists on convicts attesting Wills; conviction does not impeach testimony absent interest or falsity. Padmini Amma's tax payments aligned with her reserved income rights under the Will till death, which was not suspicious. Defendant's cross-examination evaded signature dispute. Will genuineness concerns testator-court, and not just parties. Defendant exploited Padmini's limited life interest via fabricated deed. Family knowledge of Will (including Padmini, defendant) was ignored; defendant's misuse of mother's ignorance to defeat the Will was overlooked by the trial court. Defendant's case lacked factual or evidentiary support. Settled law mandates Will proof on attestation alone absent disproof. Trial court failed to consider defendant's evidentiary failure. Thus, it was prayed to set aside the decree, and allow the appeal, or remit the case to trial court for de novo trial.

10. The points that arose for consideration are as follows:

1) Is the finding of the trial Court that the plaintiff was unable to prove the genuineness of the will a correct decision?

2) Did the trial Court err in dismissing the suit?

3) What is the order as to costs?

11. The appellant stood by the grounds raised in the appeal, emphasizing that the trial court ought to have held there was no fabrication regarding Exhibit A1. When fraud is alleged, the burden lies on the party assailing the document to substantiate it. PW1, the propounder of the will, was supported by PW2, PW3, and PW4, who clearly established due execution under Section 63 of the Indian Succession Act, 1925, and Section 68 of the Indian Evidence Act, 1872. The propounder adequately explained the suspicious circumstances raised by the respondents through his evidence. The respondent's highlighted circumstances do not qualify as suspicious under settled law, which mandates strict scrutiny. Notably, no specific plea of forgery was raised to challenge the testatrix's signature.

12. While execution of the Will was proved per law, the respondents raised suspicious circumstances, placing a duty on the propounder to dispel them. No claims of forgery, impersonation, undue influence, or fraud were levelled against the propounder, but only the Will's genuineness was questioned as per the learned counsel for the appellant. Madhavi Amma approached

PW2 and PW3 as witnesses. PW1 stated the document's existence was known to all family members, yet the trial court rightly queried why family members were excluded as attesting witnesses, opting instead for acquaintances like PW3 (a convicted auto driver). PW3 was merely an acquaintance of Madhavi Amma, with no clarification from PW1 on this choice. PW2 knew her only from seeing her at his uncle's medical clinic. Given the family's awareness of the Will's creation, selecting mere acquaintances as witnesses remains suspicious, as correctly held by the trial court.

13. Another circumstance deemed suspicious is the exclusion of natural heirs, with property equally divided between one granddaughter (plaintiff) and one grandson (defendant), bypassing the other four children—including the mother of plaintiff and defendant. The appellant claims the Will entitles plaintiff and defendant to half share of the plaint scheduled property each, while defendant seeks the entire property via their mother's deed assigning it fully to her. Exclusion of natural heirs alone does not invalidate a Will, particularly for near and dear ones. However, Exhibit X4 series reveals Madhavi Amma availed a loan from Kodyeri Service Co-operative Bank on 04.05.2000 for house construction, after that Madhavi Amma died on 16.09.2002.

With the property mutated in Padmini Amma's name; she paid taxes in 2002. Exhibit A1 omitted mentioning the unpaid loan, creating a suspicious circumstance, as no case of Madhavi Amma lacking testamentary capacity was pleaded. Plaintiff approached the Village Office for tax payment only in 2020, refused per Exhibits A7 and A8.

14. Exhibits B1 and B2 confirm Madhavi Amma's loan secured against the property. Exhibits B3 and B4 are release deeds from Padmini Amma to defendant in 2007, acknowledging Padmini took over the loan post Madhavi Amma's death; and the defendant repaid it, securing the release. Suit was filed in 2010 after Exhibit A3 notice was issued to the defendant. The unexplained delay in enforcing the Will, despite alleged family knowledge at Madhavi Amma's death, remains unsatisfactory.

15. The appellant claims the testatrix's signature went unquestioned, but Exhibit X1 Regional Forensic Science Laboratory, Kannur report states it was impossible to opine on authorship, as questioned and standard signatures lacked consistency. Thus, the signature's proof fails. PW2, PW3, and PW4 offered inconsistent accounts of the execution's date and place. While execution on a Sunday is not inherently suspicious as no

legal prohibition exists, the witnesses' overall inconsistencies bolster the trial court's findings.

16. Learned counsel for the respondent highlighted that Exhibit A1 is a typed document prepared on a computer, not a typewriter, purportedly executed on 17.11.1996. Upon perusal, this was confirmed. The respondent argued that standardized Malayalam fonts emerged only in the 2000s - non-standardized proprietary fonts existed in the 1990s, with Unicode standardization in the early 2000s. PW4, a simple scribe, claimed he prepared Exhibit A1 at Pradeepan's office, typed on computer, and began using computers for title deeds from 1994. Absent clear evidence proving Malayalam fonts were unavailable in 1994, this remains a suspicious circumstance, though not conclusively proved.

17. Exhibits B1 to B3 establish that Madhavi Amma's original title deed was deposited at Kodyeri Service Co-operative Bank at her death. Padmini Amma mutated the property in her name. Appellant's counsel alleged Padmini Amma colluded with the defendant due to a grudge against her daughter, leading to Exhibit B4 assigning the property to defendant. No evidence supports this. Madhavi Amma's loan was discharged by Padmini

Amma; Exhibit B3 confirms Padmini Amma herself availed a loan using the property as security. This indicates plaintiff never possessed original documents. Despite alleged knowledge of Exhibit A1, plaintiff took no action post-Madhavi Amma's death which is an inexplicable delay. Per Exhibit B4 recitals, defendant repaid Padmini Amma's loan, prompting her release deed in his favour in 2007. Exhibit A1 did not surface even then.

18. Attesting witnesses PW2, PW3 were mere acquaintances, despite family awareness of Exhibit A1 as per plaintiff. No explanation exists for Madhavi Amma selecting them over family. Exclusion of natural heirs including other grandchildren, and the mother lacks justification, especially as appellant major beneficiary, gains disproportionately.

19. The reason for Madhavi Amma, in sound mind, omitting the subsisting loan from Exhibit A1 is not explained satisfactorily. Witnesses PW2 to PW3 are unreliable, with their contradictory statements with respect to the place where they executed Ext A1 and the day. Exhibit X1 Regional Forensic Science Laboratory report notes shaky, inconsistent signatures, precluding opinion on authorship. Unexplained suspicions - typing/font issues, witness choice, heir exclusion, loan omission, delay, inconsistencies etc.,

outweigh proof. The propounder has failed to discharge the burden dispelling suspicions. No extrinsic evidence clarifies intent or exclusions. Hence, the trial court rightly dismissed the suit and Exhibit A1 fails as a valid Will. Therefore, the appeal is dismissed. In the natural course of events the costs follow the event. Hence, costs allowed in favour of the respondents.

In the result,

1) The appeal is dismissed and the judgment and decree in OS 326/2010 on the file of Munsiff Court, Thalassery is confirmed.

2) The appellant shall pay the costs of the appeal to the respondents.

(Dictated to the C.A, transcribed and typed by her, corrected and pronounced by me in open Court, this the 28th day of February, 2026).

Sd/-
CIVIL JUDGE
(SENIOR DIVISION)

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Fair/Copy of Judgment in
AS No.40/2022 in
OS No: 326/2010
Dated: 28.02.2026.