

IN THE COURT OF ADDITIONAL DISTRICT JUDGE-III, THRISSUR

Present:

Sri. Jayakrishnan G.P., Additional District Judge-III, Thrissur

Monday, the 15th day of June, 2026/25th Jaishtha 1948 SE

A.S. 101/2021

(O.S.4815/2016 dated 25.10.2021 of Prl. Munsiff's Court, Thrissur)

Appellant/Defendant:-

Sreemathi, aged 51 years, D/o Peramarath Arumugan &
W/o Karyattukarakkaran Jyothibasul(late), Karyattukara,
Thekkumuri desom, Aranattukara village, Thrissur taluk.

By Adv. Sumesh K.B.

Respondent/Plaintiff:-

Karthyayani, aged 90 years, D/o Puliparambil Sankaran and
W/o Karyattukarakkaran Velunni, Thekkumuri desom,
Karyattukara, Aranattukara village, Thrissur taluk.

By Advs.A.M.Shajan, Edbeel Benny & Muhammed Sayyid.

This Appeal is coming on this day for hearing, the court delivered the following:-

J U D G M E N T

This is a civil appeal filed under order 41 rule 1 of the Code of Civil Procedure.

2. The appellant is the defendant in suit for partition. The suit was decreed by the learned Principal Munsiff, Thrissur as per judgment dated 25.10.2021. The learned Munsiff has passed the preliminary decree, directing to partition the plaint schedule property into four equal shares. The plaintiff is entitled for three fourth share and the defendant is entitled for one fourth share of the plaint schedule property. Thereafter the parties were permitted to go for final decree. Having been aggrieved by the judgment and

decree delivered by the learned Principal Munsiff, Thrissur in OS 4815 of 2016 dated 25.10.2021, the present appeal has filed.

3. The appellant/defendant is the wife of late Sri. Jyothibas. The respondent/plaintiff is his mother. The plaint schedule property having 2.02 ares comprised in Sy No. 850 of Aranattukara Village was purchased jointly in the names of late Sri. Jyothibas and plaintiff by virtue sale deed No. 4484 of 2004 on the files of Sub Registry, Ayyanthole. While so Sri. Jyothibas died intestate on 17.11.2015. According to the appellant late Sri. Jyothibas has mental illness from the very inception onwards. However utilizing his funds alone the property was purchased. Since he was mentally ill, the name of the plaintiff/respondent was included in the document only for name sake. She has no share of contribution in the consideration paid for the property. Hence the appellant is entitled for the entire plaint schedule property. The respondent has no partible right, interest or title over the property. However ignoring this aspect the court below has decreed the suit allowing partition of the plaint schedule property in favour of the plaintiff/respondent. Hence this appeal.

4. The respondent/plaintiff has contended that the property was purchased out of the share of consideration paid by herself and her late son Sri. Jyothibas. Sri. Jyothibas has no mental illness at any point of time. She was not a name lender in the sale deed. Hence allegation that the plaintiff/ respondent has no partible right, title or interest over the plaint schedule property is baseless. The appellant and the respondent are the co-owners in joint possession of the plaint schedule property. However the respondent was compelled to institute the suit on account of the disturbances from the appellant. The trial court has correctly appreciated the subject matter and allowed the preliminary decree for partition. There is nothing to interfere

with the judgment and decree of the court below. Hence plaintiff/respondent has sought to maintain the judgment and decree of the court below.

5. Points for consideration are following;

1. Whether the plaintiff/respondent has partible right, title and interest over the plaint schedule property?
2. Whether the trial court judgment is liable to be interfered or modified?
3. Order and costs.

6. Before the court below, the power of attorney holder of the plaintiff/respondent has examined as PW1 and marked Ext A1 to A5 documents . On behalf of the defendant/appellant, she herself gave evidence as DW1.

7. Heard both sides.

Point Nos. 1 and 2

8. As referred earlier, the appellant/defendant is the daughter in law of the respondent/plaintiff. The plaint schedule property was purchased jointly by the plaintiff and her son Sri. Jyothibasu by virtue of Ext A1 sale deed number 4484 of 2004 on the files of Sub Registry, Ayyanthole. On the strength of title the purchasers have effected mutation is obvious from Exts. A2 and A3 tax receipts. While so Sri. Jyothiibasudied on 17.11.2015. A copy of the death certificate has produced and marked as Ext A4. The power of attorney executed by plaintiff in favour of PW1 has produced and marked as Ext A5. According to the appellant/defendant, though the property was jointly purchased in the names of plaintiff and Sri. Jyothibasud, the plaintiff was only a name lender. Further Sri Jyothibasud has mental illness from very inception onwards. But this was not noticed rather suppressed by the plaintiff at the time of marriage of Sri. Jyothibasud with the appellant. According to the appellant

being a name lender alone, the plaintiff has no partible right, tile or interest over the plaint schedule property.

9. The appellant has given evidence as DW1 and reiterated the allegation that Sri Jyothibasu has mental illness. However there is no other evidence on record like medical certificate or even prescription of medicines for psychiatric illness in respect of late Sri. Jyothibasu to see that he has undergone treatment for mental illness at any point of time. On the contrary the recital in Ext A1 sale deed states that Sri. Jyothibasu is an upholstery worker. Needless to specify that it is difficult for a man having serious mental illness cannot continuously involve in a profession. Further the Hon'ble High Court in ***Kunhalima Vs Mahammed (2024 KHC 267)*** has held thus. *"There is always a presumption in law in favour of sanity (see, Sudama v. Rakshpal Singh - 2013 SCC OnLine All. 13428) and Hall v. Warren - R.R. R.R. 306). It was held that, there being a presumption of sanity, the person, who alleges unsoundness of mind must prove it sufficiently to satisfy the test. In Indar Singh and Others v. Parmeshwardhari Singh (AIR 1957 Pat. 491), it was held that the onus of proving insanity is, in the first place, on the person, who alleges it, the normal presumption being of sanity. the legal position that the onus of proving insanity is on the person who alleges it, has been upheld in the following decisions as well: to satisfy (i) Mahomed Yakub v. Abdul Quddus (AIR 1923 Pat. 187); and it is established (ii) Sham Nath Madan v. Mohammed Abdullah and Others (AIR 1967 J&K 85) The allegation of unsoundness of mind must be established by evidence, showing that the person was incapable of understanding the business and so, if it is so of forming a rational judgment as to the effect of the transaction on his interests, at the time of making the contract (See in this regard, i) Indar Singh (supra); ii) Ram Sundar Saha v. Kali Narain Sen Chaudhary (AIR 1927 Cal. 889); iii) Mahomed Yakub (supra))."*

10. Further the power of attorney holder of the plaintiff, who know the parties well has clearly deposed that late Sri. Jyothibasus was a man of sanity. He testified that late Sri. Jyothibasus has never affected with any insanity nor showed any insane behaviour. So considering all these aspects and the rule of evidence this court agree with the finding of the learned Munsiff that late Sri. Jyothibasus was sane. Going by the evidence, the court has convinced that the property was purchased jointly by late Sri. Jyothibasus and the plaintiff/respondent. So they have half share each over the property. By the death of Sri. Jyothibasus his half share has devolved on the appellant and the respondent by virtue of succession as per Section 8 Class 1 of the Schedule of the Hindu Succession Act. However an incidental issue arise for consideration is, whether the right of inheritance of the respondent/ plaintiff in respect of the share of deceased Sri. Jyothibasus is limited to the life estate alone. The issue came up in view of the incorporation of Section 15(c) of the Hindu Succession Act. It reads thus. *“any property inherited by a female Hindu from her pre-deceased son shall devolve, not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the predeceased son from whom she inherited the property.”*

11. However this issue has clarified by the Hon'ble High Court in ***Chakrawarthige Preethi Rupa Vs Malu [2025 1 KHC 708]*** thus. *“It is true that if the right of the mother over the property is not restricted, the result would be that the wife and children of the predeceased son would be getting only the property available at the time of death of the mother, if any. On going through the said provision, I am of the view that the Section is intended to operate on the death of the mother of a predeceased son from whom she inherited the property. The provision does not have any operation before the date of death of the mother. When the Legislature has enacted a provision for operating on the death of the mother, the Court has no jurisdiction to rewrite the said provision for making its operation before the death of*

the mother to restrict the interest of the mother. The provision makes it abundantly clear that it does not want to interfere with the absolute rights of the mother over the property. The only contingency which is contemplated is the inheritance of the said property of the predeceased son, on the death of mother to her legal heirs. The provision is incorporated only to prevent that contingency alone. If the provision is interpreted to mean that the mother is having limited ownership to make the property available for devolution to the wife and children of the predeceased son, it would be defeating the valuable rights of the mother over the property of her predeceased son. The legislature has not intended to restrict the rights of the mother in anyway. Such an intention could not be deduced from the Statement of Objects and Reasons of the Hindu Succession (Kerala Amendment) Act, 2015. The provision was intended to take away an injustice that when a Hindu male dies, the legal heirs of his mother get the property through the right of the mother, avoiding the wife and children of such a Hindu male. The Legislature wanted to limit the inheritance of the property that existed at the time of the mother's death within the family of the predeceased son. It is not permissible for this Court to rewrite the provision so as to restrict the right of the mother, which is absent in the provision and never intended by the Legislature.”

12. This court has evaluated the factual aspects through the web of law. The court finds that there is nothing to interfere with the judgment and decree delivered by the learned Munsiff in OS 4815 of 2016 dated 25.10.2021. Therefore the appeal is not meritorious and the appellant is not entitled for the reliefs. Point decided against the appellant.

Point No. 3

13. Having consideration of the facts, circumstances and evidence, the court has concluded that the appeal is devoid of merits.

14. In the result, the appeal dismissed. The judgment and the decree delivered by the delivered by the learned Principal Munsiff, Thrissur in OS 4815/2016 dated 25.10.2021 are confirmed. The respondent/plaintiff is entitled for the costs throughout. Consign the duly indexed records forthwith to the court below.

(Dictated to the Confidential Assistant, typewritten by him, corrected by me and pronounced in open court on this the 15th day of June, 2026).

Sd/-

Jayakrishnan G.P.

Additional District Judge-III, Thrissur.

APPENDIX:- Nil

sd/-

Jayakrishnan G.P.

Additional District Judge-III, Thrissur.

By order,

(True copy)

Copied by :csm
compared by:jcp

Sheristadar

