

IN THE COURT OF SUBORDINATE JUDGE, KOZHIKODE

Present:- Sri.Noushadali. K, Principal Sub Judge

Tuesday, the 20th day of July, 2023

Original Suit No. 169/2022

Between:-

1. Bharathi Amma, aged 82 years,
D/o. Karunakaran Nair,
Mammili Thadathil Veedu,
Olavanna Village, Irigalloor desom,
Guruvayorappan College (P.O)
Kozhikode taluk – 673014.

Plaintiff

And :-

1 Ambujakshi Amma, aged 79 years,
D/o. Karunakaran Nair
Mammili Thadathil Veedu,
Olavanna Village, Irigallur Desom,
Guruvayorappan College(P.O)
Kozhikode taluk - 673014

Respondent

This suit, coming on 13th day of July 2023 for final hearing before me in the presence of Sri. P. Ranjithkumar and E. Nidheesh Advocates for Plaintiff, Smt. Vinodini .K Advocate for Respondent and having stood over to this day for consideration the court delivered the following

J U D G M E N T

This is a suit for partition

2. The plaintiff in the suit has sought partition of the plaint schedule property with the following averments in the plaint:- The plaintiff and defendant are sisters. In 1965, they purchased the plaint schedule property ad-measuring 21½ cents in their joint names as per the jenmam assignment deed No. 1323/1965 of SRO Chevayur. After the purchase of the property in their joint names, the plaintiff constructed a house on the northern side of the property. The house was constructed with the consent of the defendant and exclusively out of the plaintiff's funds. The plaintiff has been residing in the said house for the past more than 50 years. Hence, the plaintiff is entitled to reservation of house situated in the property. Now the plaintiff doesn't want to keep the property in joint possession and ownership. Though the plaintiff requested the defendant to partition the property and allot her share, she did not heed that request. Hence the suit.

3. Having entered appearance, the defendant filed a written statement admitting the suit claim for partition. However, she denied the plaintiff's claim regarding the construction house out of her funds. According to her, she also contributed to the house construction.

4. Plaintiff mounted witness box and gave evidence as PW1 and marked Exts. A1 to A3. Defendant did not adduce any evidence.

5. Heard both sides.

6. Ext. A1 is the assignment deed whereby the plaintiff and defendant purchased the property sought to be partitioned. Ext. A3 is the copy of the lawyer notice issued by the plaintiff's lawyer claiming partition of the property. Ext. A2 is house tax receipt evidencing the payment of property tax in the name of the plaintiff. The right of the parties over the plaintiff schedule property is evident from Ext.A1. As I have already stated the defendant filed written statement conceding for the partition. Therefore, I hold that the plaintiff schedule property is available for partition and the plaintiff and defendant are having half share each.

7. Plaintiff's case is that the house situated in the plaintiff schedule is constructed exclusively out of the plaintiff's funds. Therefore, according to the plaintiff, she is entitled to reservation of the house situated on the property. Per contra, the defendant denied the said contention. According to her, she has also contributed to the house construction. Plaintiff did not adduce any satisfactory evidence to substantiate her claim that the house was constructed exclusively out of her funds. In the circumstances, the court cannot accept the plaintiff's case in this regard. If so, at the most, she can only claim an equitable relief of allotting the portion of the land along with the house to her share after valuing the entire property. At the same time, it has

come out in evidence that the defendant has been residing in the house situated in the suit property. There is no evidence to show that she has got any other house to reside in. No serious objection against the allotment house to the plaintiff is seen raised by the defendant in the written statement. Considering these circumstances and also considering the fact that it is the plaintiff who has been residing in the house since its construction, I am of the opinion that she is entitled to certain equity for reservation of the house in her favour. However, the reservation can only be subject to payment of the value of the house to the defendant.

8. For the above reasons, I hold that a preliminary decree for partition is to be passed in this suit. Cost shall come out of the estate as usual.

In the result, a preliminary decree for partition is passed as follows:-

1. Plaintiff schedule property be divided into two equal shares considering the good and bad nature of the soil and convenience of enjoyment and one such share be allotted to the plaintiff;
2. The remaining one share be allotted to the defendant on the payment of the requisite court fee;

3. The share of the plaintiff be carved out so as to include the house as far as possible and without prejudice to the right of the defendant to get her due allotment in the land. In the event of reservation of the house to the plaintiff, she shall be liable to pay its share value to the defendant.
4. In compliance of the ruling of Hon'ble Supreme Court in **Kattukandi Edathil Krishnan V. Kattukandi Edathil Valsan and others (2022(4) KHC 236)**, the suit is posted to 03-08-2023 for taking steps under Order XX R.18 of the CPC

(Typed by myself, corrected by me and pronounced in open court, this the 20th day of July 2023)

Principal Sub Judge

Plaintiff Witness:-

PW1 - Bharathi Amma, D/o. Karunakaran Nair

Plaintiff Exhibits:-

- | | | | | |
|-----|---|------------|---|--|
| A1 | - | 20.05.1965 | - | Copy of assainment deed No. 1323/1969 where by the plaintiff and respondent purchased the property sought to be partitioned. |
| A2 | - | 05.07.2023 | - | House tax evidencing the payment of property. |
| A3 | - | 17.03.2021 | - | Copy of lawyer Notice issued by plaintiff Layer claiming partition of the property. |
| (a) | - | 17.03.2021 | - | Acknowledgement Card. |
| (b) | - | 17.03.2021 | - | Postal Receipt. |

Respondent Witness and Exhibits:- Nil

Principal Sub Judge.

Fair/Copy of Judgment in
O.S. 169/2022
Dated :20.07.2023