

IN THE COURT OF THE MUNSIFF-MAGISTRATE, MANANTHAVADY

Present : Sri.Anand Parathara, Munsiff-Magistrate, Mananthavady

Monday, the 15th day of September – 2025

(The 24th day of Bhadra – 1947)

ORIGINAL SUIT No.24/2024

Between:

1. Fathima, Aged 57 years, W/o.Abdurahiman,
Nuchyan House, 6th Mile, Anjukunnu Post,
Anjukunnu Amsom Desom, Mananthavady Taluk,
Wayanad District, Kerala, Pin: 670 645.
2. Ayisha, Aged 40 years, W/o.Muhammedkutty and
D/o.Abduraheeman, Kattikkalan House, Anjukunnu Post,
Anjukunnu Amsom Desom, Mananthavady Taluk,
Wayanad District, Kerala, Pin: 670 645.
3. Abdulla.N, Aged 38 years, S/o.Abdurahiman,
Nuchyan House, Cherukunnu, Anjukunnu Post,
Anjukunnu Amsom Desom, Mananthavady Taluk,
Wayanad District, Kerala, Pin: 670 645.
4. Abida.N., Aged 29 years, D/o.Abdurahiman,
Nuchyan House, Cherukunnu, Anjukunnu Post,
Anjukunnu Amsom Desom, Mananthavady Taluk,
Wayanad District, Kerala, Pin: 670 645.

Plaintiffs

And:

1. Abdulrahiman, Aged 68 years, S/o.Soopi Haji,
Nuchyan House, Cherukunnu, Anjukunnu Post,
Anjukunnu Amsom Desom, Mananthavady Taluk,
Wayanad District, Kerala, Pin: 670 645.
2. Arifa.N, Aged 34 years, D/o.Abdurahiman, Aluva House,
Vellamunda Post, Vellamunda Amsom Desom,
Mananthavady Taluk, Wayanad District, Kerala,
Pin: 670 731.

Defendants

This suit coming on 09.07.2025 for hearing before me in the presence of Sri.K.J.Poulose, Advocate for the plaintiffs and the defendants set exparte and having stood over for consideration to this day the Court delivered the following:-

J U D G M E N T

This is a suit filed under s.26 r/w Order VII Rule 1 of the Code of Civil Procedure seeking a decree declaring the civil death of the 1st defendant and the partition of the plaint schedule property between the parties herein.

2. The plaint schedule property belongs to the 1st Defendant, who is the husband of the 1st Plaintiff, and the father of the other parties herein (the Plaintiffs No.2 to 4 and the Defendant No.2). The 1st defendant owns the property by virtue of the deed No.332/1989 of the Sub Registrar's office at Panamaram. Thereafter the 1st defendant has been in possession and enjoyment of the property. He has been remitting the tax also with regard to the said property. The 1st defendant has been under medication for some psychiatric ailments and he refused to take the medicine on 07/12/2014 and told the 1st plaintiff that he is setting out to Ajmer. Before that day also the 1st defendant used to tell so and on two occasions the 1st defendant returned after about 25 days. But after 07/12/2014 the 1st defendant did not return. The plaintiff avers that on 09/12/2014, there was a communication from the 1st defendant that he was heading Ajmer. Though the parties went there and enquired, they did not succeed. Though the parties herein made all possible enquiries to find out the whereabouts of the 1st defendant, it all went vain. So they complained before the police on 28/01/2015. Even the police could not find out the 1st defendant. The 1st defendant loved the parties herein and if the 1st defendant was alive, the parties herein would have heard from the 1st defendant. Hence the parties believe that the 1st defendant is no more. The plaint schedule property is still in the possession of the

1st defendant. The parties herein are the legal heirs of the 1st defendant. The 1st plaintiff is entitled to a share of 5/40 in the plaint schedule property. The plaintiff No.2 and No.4 and the 2nd defendant are each entitled to a share of 7/40 in the plaint schedule property. The 3rd plaintiff is entitled to a share of 14/40 in the plaint schedule property. Hence this suit seeking a decree declaring the civil death of the 1st defendant and the partition of the plaint schedule property between the parties herein.

3. Against the 1st defendant, substituted service was issued. The presence of the 1st defendant could not be procured as he could not be found. The 2nd defendant was served with the summons and did not appear. Hence the suit had to be proceeded setting the defendants as ex-parte.

4. From the side of the plaintiffs PW1 to PW3 were examined. Ext. A1 to A4 were marked.

5 Heard.

6. The plaintiff was examined as PW1 and he deposed in tune with the plaint averments. The title deed to the plaint schedule property is marked as Ext.A1. The tax receipt of the said property for the years 2023 to 2024 is marked as Ext.A2. As the parties herein could not find the whereabouts of the 1st defendant, they complained before Panamaram Police Station and the copy of the First Information Report is marked as Ext.A3. The paper publication as the substituted steps against the 1st defendant was marked as Ext.A4. Through the above evidence and records before the court the plaintiffs proved the plaint averments with regard to

the disappearance of the 1st defendant and also with regard to the averment that the 1st defendant is not heard of since at least 09/12/2014.

7. PW2 is a friend of the 1st defendant. PW3 is the brother of the 1st defendant. PW2 and PW3 also deposed supporting the plaint averments. From considering the uncontested evidence on record it is found that the plaintiff has proved that the 1st defendant has not been heard of, for at least seven years, by those who would naturally have heard of him if he had been alive. As per s.108 of the Indian Evidence Act, when the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it. In this case, the defendants are ex parte. Hence from considering the uncontested evidence on record it is found that the plaintiff has proved the plaint averments. Accordingly, the civil death of the 1st defendant is presumed and found that there is to be a preliminary decree partitioning the plaint schedule property as sought for.

Hence the suit is decreed as follows: -

1. The 1st plaintiff is entitled to a share of 5/40 in the plaint schedule property.
2. The 2nd plaintiff is entitled to a share of 7/40 in the plaint schedule property.
3. The 3rd plaintiff is entitled to a share of 14/40 in the plaint schedule property.
4. The 4th plaintiff is entitled to a share of 7/40 in the plaint schedule property.

5. The 2nd defendant is entitled to a share of 7/40 in the plaint schedule property.
6. The allotment of the share of the 2nd defendant is subject to the payment of separate Court fee.
7. The cost of the suit shall come out of the estate.
8. The suit is adjourned, for taking steps under Order XX Rule 18 of the Code of Civil Procedure, to 28.10.2025.

(Pronounced by me in open court on this the 15th day of September, 2025)

MUNSIFF-MAGISTRATE

APPENDIX

Plaintiff's Witness:

PW1	–	19.03.2025	–	Fathima
PW2	–	19.03.2025	–	C.K.Chandrasekharan
PW3	–	26.05.2025	–	Rasheed.N

Plaintiff's Exhibits:

A1	–	28.02.1989	– Theer Deed No.332/1989 of SRO Panamaram
A2	–	24.08.2023	– Tax receipt No.KL 12010108248/2023
A3	–	28.01.2015	– Copy of FIR of Panamaram Police Station (FIR No.0049)
A4	–	07.12.2024	– Paper Publication in Mathrubhumi Daily

Defendant's Witness & Exhibits: NIL

Court's Exhibits: NIL

MUNSIFF-MAGISTRATE

Typed by : Sreelathika.V.M
Compared By : Shiji.M.T

IN THE COURT OF THE MUNSIFF-
MAGISTRATE, MANANTHAVADY

FAIR JUDGMENT

IN

OS.24/2024

DATED: 15.09.2025