

IN THE COURT OF THE MUNSIFF OF PAYYANNUR

Present: Smt.Greeshma.A.S, Munsiff, Payyanur

Tuesday, the 31st day of March, 2026

(31st day of Chaithra, 1948)

ORIGINAL SUIT No.01OF 2019

Abraham Skariya, aged 47 years, S/o.I.Skariya,	]	
Nellanikkunnil House, Puthur, P.O.Kozhummal,	]	
Payyannur Taluk, Kannur District.	]	Plaintiff
	]	

Vs.

- | | |
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| 1. Annamma Skariya, (Died) aged 71 years, W/o.Late] | |
| I.Skariya, Nellanikkunnil House, Puthur,] | |
| P.O.Kozhummal, Payyannur Taluk, Kannur] | |
| District.] | |
| 2. Idikkula Skariya, aged 49 years, S/o.Late I.Skariya,] | Defendants |
| Nellanikkunnil House, Kisan Kovval Road,] | |
| Kothayimukku, P.O.Payyannur, Payyannur Taluk,] | |
| Kannur District.] | |
| 3. Soosamma Skariya, aged 40 years, D/o.Late] | |
| I.Skariya, Nellanikkunnil House, Puthur,] | |
| P.O.Kozhummal, Payyannur Taluk, Kannur District] | |

This suit is coming on this day for hearing before me in the presence of Sri.E.K.Ramakrishnan, Advocate for the Plaintiff; of S/Sri.Mahesh V Ramakrishnan and Roshi.P.V, Advocates for the defendant No.2; defendant No.3 name called absent, set expate and the Court delivered the following:

J U D G M E N T

Originally the suit was filed for partition.

2. **The averments in the plaint in brief are as follows:-** The plaint schedule property originally belonged to Idikkuda Makan I. Scaria who is the father of plaintiff and defendant Nos.2 and 3 and husband of defendant No.1 as per Will No.72/1986 of SRO, Payyanur, document No.690/76, document No.1284/77, document No.70/94 of item No.4. The aforesaid Scaria died on 03.10.2015. After his death the right over the property devolved upon the plaintiff and the defendants.

3. There are so many inconveniences to the plaintiff to keep the plaint schedule properties in joint possession and co-ownership. Hence, so many times, the plaintiff demanded for the partition of the plaint schedule property. But the defendants No.1 to 6 are not ready for the partition. So the plaintiff sent a lawyer notice on 29.12.2016, demanding partition of the plaint schedule property. The defendant No.2 received the notice and sent reply with false allegations. So the defendants are not ready for partition.

4. In the reply notice, defendant No.2 contended that I. Scaria had gifted 2 acres of land in R.S.No.167/5 under document No.3147/2002 of SRO, Payyanur, to defendant No.2. It was further claimed that, pursuant to the gift deed, the property belongs to defendant No.2, and that items Nos.1 and 4 of the plaint schedule property were set apart for defendant No.2 after the death of I. Scaria. Defendant No.2 also asserted that Scaria had executed Will No.125/2002 of SRO, Payyanur, on 21.11.2002 to that effect, and that upon the death of their father, the said properties devolved upon defendant No.2. These claims are false and specifically denied by the plaintiff.

5. The Will bearing No.125/2002 of SRO, Payyanur as claimed by the defendant No.2, was not registered by Scaria of his own sound mind and with full knowledge and consent. While registering the document No.3147/2002, the defendant No.2 influenced and misled his father, Scaria, and caused a Will to be written and registered as part of document No.3147/2002.

6. The said Will is a false and fraudulent document and has no legality. The said Will is not binding on the plaint schedule properties or on the plaintiff's right therein. Hence the suit is filed for partition.

7. **Written statement filed by defendants No.2 is as follows:-** The suit is not maintainable either in law or on facts. He denied the entire contentions in the plaint. The defendant admitted that the plaint schedule property Nellanikunnil Sacaria who is the father of defendant No.2 and 3 and husband of defendant No.1. The aforesaid Sacaria bequeathed 2 acre land to the plaintiff. The 2 acre property situated on the western side of the plaint schedule property gifted to the plaintiff was gifted by the father Sacaria, to the defendant No.2 has been in possession and enjoyment of the same. A Will bearing No.125/2002 of SRO Payyanur had been executed stating that the properties shown as item No.1 and 4 in the plaint schedule property. After the death of Sacaria exclusively to the defendant, his son and that after the death of Sacaria, item No.1 and 4 belong solely to the defendant and no one else would have any right to claim the same. The aforesaid Scaria died on 03.10.2015. After the death of Sacaria the right over the item No.1 and 4 of the plaint schedule property was devolved upon this defendant, and he is remitted the land tax also. It was specifically provided in the Will that this defendant shall pay a sum of Rs.1,000/- every month to the defendant No.1 who is the wife of Sacaria and mother of this defendant, and the said condition is being duly complied by this defendant. The lawyer notice has

been issued demanding partition of the plaint schedule properties, including the two acres that were gifted to this defendant by his father, Sacaria. The plaintiff is aware of the aforesaid gift deed and the Will executed by the father Sacaria. Between the two acres properties gifted by the father Sacaria, to the plaintiff and this defendant respectively, there is a one acre property and a house is situated thereon. The father Sacaria resided in the aforesaid house until his death. The aforesaid one acre property and house and the property situated in the eastern side of the plaint schedule property comprising 0.0170 hectare was in R.S No.167/3, 0.0780 hectare in R.S No.168/9, 0.0290 hectare in R.S No.168/11 and 0.0273 hectare property in R.S No.168/21 in Peralam amsom. All the properties in respect of which there is joint ownership and possession in the suit have not been included. Therefore, partial partition is not allowed. Hence the suit is liable to be dismissed.

8. Heard both sides.

9. On the basis of the above pleadings, following issues are framed:-

1. Whether the plaint schedule property is partible?
2. Whether the gift deed bearing No.3147/2002 is a valid one?
3. If property is partible, what is the share to which each party is entitled to?
4. What is the order as reliefs and costs?

Additional issue:-

- 1) Whether the Will 125/2002 of SRO, Payyanur dated 21.11.2002 is a valid one?

10. The evidence in this case consists of oral evidence of PW1, and Exts.A1 to A6 were marked from the side of the plaintiff. On the side of the defendants, DW1 and DW2 were examined, and Ext.B1 to B18 were marked.

11. Ext.A1 is the Will bearing No.72/1986, Ext.A2 is the copy of document No.690/76, Ext.A3 is the document No.1284/77, Ext.A4 is the document No.70/1994, Ext.A5 is the copy of lawyer notice, Ext.A6 is the reply notice.

12. Ext.B1 is the document No.284/17, Ext.B2 is the document No.80/09, Ext.B3 is the copy of document No.3147/2002, Ext.B4 is the Will No.125/2003, Ext.B5 is the copy of document No.125/2002, Ext.B6 and B7 are the cash receipts, Ext.B8 to B14 are the tax receipts, Ext.B15 is the agreement, Ext.B16 is the encumbrance certificate, Ext.B17 is the death certificate, Ext.B18 is the cash receipt issued by കേരള കർഷക തൊഴിലാളി ക്ഷേമനിധി ബോർഡ്, തൃശ്ശൂർ .

13. **Additional Issue:-** According to the plaintiff, the property is in joint possession of the plaintiff and defendant No.1 to 3. The plaint schedule property consists of four items. The plaintiff admits the document No.3147/2002 by which the father of the plaintiff and defendant had gifted the property to the defendant No.2 as per the gift deed No.3147/2002, which consists of 2 acres of property in R.S No. 167/5.

14. The defendant No.2 claims the right over the item No.1 and 4 of the plaint schedule property as per document No.3147/2002. According to defendant No.2, the right over the item No.1 and 4 of the property was devolved to him as per the Will dated 21.11.2002 by document No.125/2002 of SRO, Payyanur. According to the defendant, the item No.1 and 4 of the property is exclusively possessed by him, and he also paid land tax on the property. The learned counsel for the defendant No.2 contended that in the

Will there is a stipulation that defendant No.1 should give Rs. 1,000/- to the mother of the defendant and wife of the testator in every month, which is being done by defendant No.2.

15. According to the plaintiff, the defendant No.2 executed the Will by father Sacaria by way of coercion. The learned counsel for the plaintiff contended that the Will dated 21.11.2002 is not executed by the free Will of his father Sacaria.

16. According to the learned counsel for the defendant, out of the property possessed by his father, Sacaria, 2 acres of property were given to the plaintiff as per a registered gift deed. Out of the said property, excluding the 2 acres given to the plaintiff, the property on the western side is given to the defendant as per the gift deed No.3147/2002. As per the above said gift deed, the defendant accepted the gift and is enjoyed and possessed by the defendant. According to the defendant, his father executed a Will dated 21.11.2002, bearing document No. 125/2002 of SRO, Payyanur. According to the defendant, the item No.1 and 4 of the plaint schedule property is possessed and enjoyed by the defendant as per the above Will.

17. The core issue in the present case is regarding the genuineness of Ext.B1 Will in the name of Yesoda, with respect to the properties, including the plaint schedule property. The Hon'ble Apex Court in ***Kalyan Singh v. Smt. Chhoti and others, AIR 1990 SC 396***, held:

“A will is one of the most solemn documents known to law. The executant of the will cannot be called to deny the execution or to explain the circumstances in which it was executed. It is, therefore, essential that trustworthy and unimpeachable evidence should be produced before the court to

establish genuineness and authenticity of the will. It must be stated that the factum of execution and validity of the will cannot be determined merely by considering the evidence produced by the propounder. In order to judge the credibility of witnesses and disengage the truth from falsehood the court is not confined only to their testimony and demeanour. It would be open to the court to consider circumstances brought out in the evidence or which appear from the nature and contents of the documents itself. It would be also open to the court to look into surrounding circumstances as well as inherent improbabilities; of the case to reach a proper conclusion on the nature of the evidence adduced by the party.”

18. It is a settled principle of law that the initial onus of proving the genuineness of a Will lies with the propounder of the Will (***Pushpavati v. Chandraraja Kadamba; (1973) 3 SCC 291***). There need not be any doubt that defendants No 2, who relied on Ext.B4 Will, have to ward off all suspicious circumstances surrounding the Will (AIR 1959 SC 498, AIR 1982 SC 133, AIR 2007 SC 2025, AIR 1977 SC 63, AIR 1964 SC 529). They have to comply with the requirements under Section 63 of the Indian Succession Act and Section 68 of the Evidence Act.

19. In order to prove the execution of Ext.B4 Will, one of the attesting witnesses to Ext.B1 Will, was examined as DW2. He identified Ext.B1 and his signature in Ext.B1. DW2 deposed as follows:- ഇതിൽ ഒപ്പു വെച്ചത് ഞാൻ ആണ് . He testified that he had seen the testator Sacaria, affixing his signature to Ext.B1, and the other witness had also seen Sacaria affixing his signature to Ext.B1. He further testified that Sacaria had also seen both of the attesting witnesses affixing their signatures to Ext.B1. DW2 deposed that സക്കറിയ എല്ലാം പേജിലും ഒപ്പിട്ടു. അതിനുശേഷം എനോട് ഒപ്പിടാൻ ആവശ്യപ്പെട്ടു. അത് പ്രകാരം ഞാൻ ഒപ്പുവെച്ചു. During the cross-examination, DW2 deposed that the will was read over. DW2 testified as follows: ആധാരം എഴുതുന്നത് കണ്ടിട്ടില്ല, Witness adds വായിച്ചു കേൾപ്പിക്കുകയായിരുന്നു. DW1 clearly identified the signatures and testified that who all were present and signed Ext.B4 and other details necessary to prove the Will as per Section 63 of the Indian Succession Act 1925 read with Section 68 of the Indian Evidence Act, 1872.

20. Now the question is whether Ext.B1 Will executed by Scaria is genuine. In *K. Laxmanan v. Thekkayil Padmini and Ors, 2009 (1) KLT 29 (SC)*, the Hon'ble Supreme Court has set the law with respect to the onus of proving that no suspicious circumstances surrounding the execution of the deed existed, in the following words:

“When there are suspicious circumstances regarding the execution of the Will, the onus is also on the propounder to explain them to the satisfaction of the Court and only when such responsibility is discharged, the Court would accept the Will as genuine. Even where there are no such pleas, but circumstances give rise to doubt, it is on the propounder to satisfy the conscience of the Court. Suspicious circumstances arise due to several reasons such as with regard to genuineness of the signature of the testator, the conditions of the testator's mind, the dispositions made in the will being unnatural, improbable or unfair in the light of relevant circumstances or there might be other indications in the will to show that the testator's mind was not free. In such a case, the Court would naturally expect that all legitimate suspicion should be completely removed before the document is accepted as the last will of the testator.”

21. In ***Daulat Ram and Ors. v. Sodha and Ors.***, (2005) 1 SCC 40, the position is clearly stated in the following words by the Hon’ble Supreme Court of India:

“In addition, it has to satisfy the requirements of Section 63 of the Indian Succession Act, 1925. In order to assess as to

whether the Will has been validly executed and is a genuine document, the propounder has to show that the Will was signed by the testator and that he had put his signatures to the testament of his own free Will; that he was at the relevant time in a sound disposing state of mind and understood the nature and effect of the dispositions and that the testator had signed it in the presence of two witnesses who attested it in his presence and in the presence of each other. Once these elements are established, the onus, which rests on the propounder, is discharged. But, where there are suspicious circumstances, the onus is on the propounder to remove the suspicion by leading appropriate evidence. The burden to prove that the will was forged or that it was obtained under undue influence or coercion or by playing a fraud is on the person who alleges it to be so.”

22. PW1 denied the execution of Ext.B4 Will. According to the plaintiff, Scaria was not in a fit state of mind and body at the time of the execution of the alleged Will. To prove their case plaintiff was examined as PW1, and Ext.A1 to A6 were marked. During cross examination PW1 deposed that he was not aware of the Will 125/2002 till Ext.A6 reply notice was received by him. PW1 deposed as follows:- 125/2002 നെ കുറിച്ച്

അന്വേഷണം നടത്തി പക്ഷെ അതിനെക്കുറിച്ച് കടുബത്തിലെ ആർക്കും അറിയില്ല എന്ന മറുപടിയാണ് എനിക്ക് കിട്ടിയത്. PW1 deposed that because of the above said reason he came to a conclusion that the Will was executed by his father by coercion of the defendant and without his knowledge. PW1 deposed as follows:- ഞാൻ ഒരു അനുമാനത്തിന്റെ അടിസ്ഥാനത്തിൽ പറഞ്ഞതാണ്. PW1 denied the suggestion put forth by the learned counsel for the defendant that Will No.125/2002 was not executed by his father by coercion and undue influence.

23. However, the specific contention of defendants No.2 was that Sacaria was in a fit state of mind and body while executing Ext.B4 Will. In examination-in chief, DW1 testified that his father was in a fit state of health and mind at the time of execution of Ext.B4 Will. Further, during cross-examination, DW1 denied the suggestion made by the learned counsel for the plaintiff that the gift deed was the only thing his father intended to write in favour of DW1, and that the gift deed was written under his supervision therefore DW1 made the Ext B4 will without his father's knowledge, prepared it, and made his father's signature on it without his consent, and registered it. Thus, other than the mere allegation in the pleading, nothing has been brought out in evidence by the plaintiff to prove any suspicious circumstances regarding the execution of Ext.B4 Will.

24. One of the main arguments of the learned counsel for the plaintiff is that on the same day the gift deed and Ext.B4 will was made, and without the knowledge of the father Sacaria, the will was made by DW1 and made his father put his signature on the same. Also, while the will was not executed by the father Sacaria, he was not of a sound state of mind. Hence, the Will is not genuine. Plaintiff has admitted the execution of gift deed executed on the same day but denied the execution of will. So there is no dispute that the gift deed was executed by father Sacaria with his full knowledge and state of mind .Mere fact that the gift deed and will was executed on the same day will not vitiate the Will. Even though DW1 and DW2 was examined in length nothing was brought out in cross examination to substantiate the contention of plaintiff. Further, the propounders have proved the Will as per Section 63 of the Indian Succession Act 1925, read with Section 68 of the Indian Evidence Act, 1872. The mere fact that the will and gift deed was executed on the same day cannot be taken as a ground for holding that the Will is not genuine, without any vitiating circumstances. Hence, the contention of the learned counsel for the plaintiff is not sustainable.

25. On the perusal of the entire evidence, it can be seen that the evidence of defendant no. 2 remained uncontroverted. Although the learned counsel for the plaintiff contended that Ext.B4 Will is not a genuine

document, nothing has been brought out in evidence to prove his contention. In the absence of any corroborating evidence, the plaintiff had miserably failed to prove that Ext.B4 is not a genuine document. Thus, the above discussed circumstances, coupled with the evidence of DW1 and DW2, would prove the case of the defendants no.2 that Ext.B1 Will was voluntarily executed and registered by Sacaria, in a sound disposition state of mind and health. In the said scenario, I am of the view that the case put forward by the defendants no.2 is probable. Hence, I am of the opinion that Sacaria had voluntarily executed Ext.B4 Will. Therefore, the plaint schedule item no 1 and item no 4 property is found to be not partible. In view of the above discussion, the additional issue is found against the plaintiff.

26. According to the defendant, in the middle of the 2-acre property gifted to the plaintiff and defendant, one acre of property with a house was not included in the partition. According to the defendant, since the above property was not included in the partition suit, the suit is not maintainable as a partial partition. The entire extent of properties that originally belonged to Scaria has not been included in the plaint schedule. Therefore, they contended that the suit is bad for partial partition.

27. In ***Gopalan v. Vasu, 1986 KHC 281***, the Hon'ble High Court of Kerala held:

“7. The rule against partial partition is only one of equity and convenience. Therefore, it is better to limit the rule in its

application to properties over which the parties have community of interest and unity of possession. If partial partition can be had without inconvenience to the other sharers and if it will not stand in the way of equities being adjusted, it is not necessary to insist that all properties will have to be scheduled. Plaintiff is the master of the litigation. Normally he is the person to decide what are the reliefs to be claimed and who are all to be impleaded. Of course, these are all not to be left to the sweet will and pleasure of the plaintiff. His choice could always be only subject to the relevant provisions of law. But normally he cannot be compelled to fight persons against whom he does not want to fight. So also he cannot be compelled to schedule properties which according to him are not partible. As earlier stated these are not hard and fast propositions.”

28. In view of the above dictum, the suit cannot be held not maintainable or dismissed for the sole reason that the entire properties of Sacaria were not included in the schedule. Hence, the point is found, accordingly, in favour of the plaintiff.

29. **Issue No.1:-**The plaint schedule property originally belonged to Idikkuka Makan I. Sacaria who is the father of plaintiff and defendant No.2 and 3 and husband of defendant No.1 as per Will No.72/1986 of SRO,

Payyanur, document No.690/76, document No.1284/77, document No.70/94 of item No.4. The aforesaid Sacaria died on 03.10.2015. After his death the right over the property devolved upon the plaintiff and the defendants.

30. The principles of inheritance under the Indian Succession Act, 1925, would govern the succession. Under the Indian Succession Act, 1925. When the father dies, his estate is divided between his surviving wife and his children. In this case the defendant no 1 ,wife died and the legal heirs are plaintiff and defendant No 2 and defendant No 3 who are the daughter and two sons. Accordingly, the plaint schedule properties item no 1 and item no 4 are found partible among the plaintiff and the defendants. Hence, it is found that the plaint schedule properties shall be divided into 3 equal shares, in which the plaintiff is entitled to $\frac{1}{3}$ shares. The defendants no.2 and 3 shall be entitled to $\frac{1}{3}$ share each.

31. **Issue No.4:-** In view of the findings in issues No.1 to 3 and additional issue, the suit is to be partly decreed.

In the result, the suit is partly decreed and a preliminary decree is passed as follows:-

- 1. The plaint schedule properties item No. 2 and item No.3
are found partible between the plaintiff and defendants by
metes and bounds.*

2. *The plaint schedule properties shall be divided into three equal shares.*
3. *The plaintiff shall be entitled to 1/3 shares.*
4. *Defendants No.2 and 3 shall be entitled to 1/3 shares each.*
5. *The parties are at liberty to apply for the passing of a final decree.*
6. *The costs shall come out of the estate.*

For steps to 28.5.26

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court, this the 31st day of March, 2026).

Sd/-
MUNSIFF.

Plaintiff's Exhibits:-

A1	12.06.1986	Ossyath
A2	29.06.1978	Copy of Theer deed
A3	...	Janm deed
A4	05.01.1994	Janm deed
A5	29.12.2016	Copy of Lawyer notice
A6	03.01.2017	Copy of Reply Notice

Plaintiff's Witness:-

PW1 : Abraham Skariya

Defendants' Exhibit

B1	08.05.2009	Ossyath
B2	28.10.2017	Settlement deed
B3	21.11.2002	Copy of Settlement deed
B4	21.11.2002	Ossayath
B5	21.11.2002	Copy of Ossayath
B6	...	Duplicate receipt
B7	...	Duplicate receipt
B8	23.11.2015	Basic Tax receipt
B9	01.11.2017	Basic Tax receipt
B10	02.05.2018	Basic Tax receipt
B11	30.04.2019	Basic Tax receipt
B12	21.05.2020	Basic Tax receipt
B13	17.05.2023	Basic Tax receipt
B14	08.04.2024	Basic Tax receipt
B15	13.09.2022	Consent Agreement
B16	21.09.2023	Certificate of Encumbrance on property
B17	31.12.2015	Death Certificate
B18	02.05.2018	Receipt issued by Kerala Karshaka Thozhilali Kshemanidhi Board

Defendant's Witness

DW1 : Idikkula Scariya

DW2 : Sukumaran Vannalath

Sd/-
MUNSIFF.