

IN THE COURT OF THE MUNSIF, VATAKARA.

Present: Smt. Aiswarya T., Munsiff
Wednesday, the 24th day of July, 2024

ORIGINAL SUIT NO. 108/1998

Between:

1. Pilavulla Parambath Choyi (died), 72 years,
S/o Kannan, Kavilumpara amsom,
Moilothara desom, Vatakara Taluk.

Suppl.

2. Rajan, S/o Choyi, 64 years,
Pilavulla Parambath house,
Kavilumpara amsom, Moilothara desom,
Vatakara Taluk.
3. Brother Chandran, S/o Choyi, 61 years,
Collie, Pilavulla Parambath house,
Kavilumpara amsom, Moilothara desom,
Vatakara Taluk.
4. Brother Kunhikannan, S/o Choyi, 50 years,
Collie, Pilavulla Parambath house,
Kavilumpara amsom, Moilothara desom,
Vatakara Taluk.
5. Sister Geetha, D/o Choyi, 48 years,
Pilavulla Parambath house,
Kavilumpara amsom, Moilothara desom,
Vatakara Taluk.
6. Sister Radha, D/o Choyi, 45 years,
Pilavulla Parambath house,
Kavilumpara amsom, Moilothara desom,
Vatakara Taluk.

Plaintiffs

(Supplemental plaintiffs No. 2 to 6 are impleaded
as per Order in IA 1/2023 dated 16.03.2024)

And:-

1. Pavithran (died) S/o Kunhikannan, 55 years,
residing at Kuniyil, Agriculturist,
Palayad amsom, Pathiyarakkara desom,
Vatakara Taluk.

Defendants

2. Younger Brother Raveendran,
S/o Kunhikannan, 52 years,
residing at Kuniyil, Agriculturist,
Palayad amsom, Pathiyarakkara desom,
Vatakara Taluk.
 3. Sister Vasantha, 50 years,
residing at Anganthondi, Narippatta amsom,
Cheekkonnu desom, Vatakara Taluk.
 4. Younger Sister Kunhiparambath Nirmala(died),
48 years, Puthuppanam amsom desom,
Vatakara Taluk.
 5. Brother Kuniyil Sasi, 46 years, Agriculturist,
Palayad amsom, Pathiyarakkara desom,
Vatakara Taluk.
 6. Brother Kuniyil Babu, 44 years,
Palayad amsom, Pathiyarakkara desom,
Vatakara Taluk.
 7. Pilavulla Parambath Chathu (died),
S/o Kannan, 60 years, Kavilumpara amsom,
Moilothora desom, Vatakara Taluk.
 8. Sister Punathil Mathu (died),
65 years, Vatakara Taluk, Maruthonkara amsom,
Kallad desom.
 9. Chandanapurath Raghavan (died),
S/o Kallyani, 62 years, Koyilandy Taluk,
Viyyur amsom, Kollam desom, Koyilandy Taluk.
 10. Makkanari Girija, D/o Nanu, 24 years,
Iringal amsom desom. Koyilandy Taluk,
 11. Younger Sister Geetha, 22 years,
Iringal amsom desom, Koyilandy Taluk.
- Defendants

12. Brother Santhosh Kumar,
20 years, Iringal amsom desom,
Koyilandy Taluk.
13. Mother Janu, D/o Choyi, 58 years,
Makkanari, Iringal amsom desom,
Koyilandy Taluk.
14. Kalariyullathil Janu, D/o Imbichan,
65 years, Meladi amsom desom,
Koyilandy Taluk (died).
15. Kalariyullathil Gopalan, S/o Imbichan,
68 years, Meladi amsom desom,
Koyilandy Taluk (died).
16. Kalariyullathil Lakshmi, D/o Imbichan,
62 years, Meladi amsom desom,
Koyilandy Taluk.
17. Son Kalariyullathil Jayan @ Jayarajan,
S/o Lakshmi, 35 years, Driver,
Meladi amsom desom, Koyilandy Taluk.
18. Sister Kalariyullathil Reena, 30 years,
Meladi amsom desom,
Koyilandy Taluk.
19. Kalariyullathil Vasantha, D/o Imbichan,
67 years, Meladi amsom desom,
Koyilandy Taluk.
20. Son Kalariyullathil Ranjith Lal, 25 years,
Meladi amsom desom, Koyilandy Taluk.
21. Brother Kalariyullathil Rajeev, 22 years,
Meladi amsom desom, Koyilandy Taluk.
22. Sister Kalariyullathil Rekha, 20 years,
Student, Meladi amsom desom,
Koyilandy Taluk.



Defendants

23. Vazhayil Sudhakaran, S/o Gopalan, 50 years, Kunnummal amsom, Vattoli desom. Vatakara Taluk.
 24. Younger Brother Sadu @ Sadanandan (died) 48 years, Agriculturist, Kunnummal amsom, Vattoli desom. Vatakara Taluk.
 25. Sister Nirmala, 46 years, residing at Vadakke Ramath, Chemmarathur amsom desom, Vatakara Taluk.
 26. Younger Sister Chandri, 44 years, residing at Thottyera, Narippatta amsom, Cheekkonnu desom, Vatakara Taluk.
 27. Younger Sister Pathmini, 42 years, residing at Palollathil, Puthuppanam amsom desom, Vatakara Taluk.
 28. Kuniyil Kunnath Balan, S/o Govindan, 56 years, business, Vatakara amsom desom. Vatakara Taluk.
 29. Younger Brother Vasudevan (died), S/o Govindan, 54 years, business, Kuniyil Kunnath house, Vatakara amsom desom, Vatakara Taluk.
 30. Brother Lakshmanan, S/o Govindan, 52 years, business, Kuniyil Kunnath house, Vatakara amsom desom, Vatakara Taluk.
 31. Brother Mohan Babu, S/o Govindan, 50 years, business, Kuniyil Kunnath house, Vatakara amsom desom, Vatakara Taluk.
 32. Younger Brother Chandran, 48 years, Chaithanya Housing Colony, Vatakara amsom desom, Vatakara Taluk.
- Defendants

33. Sister Suneethi, 42 years,
Chaithanya Housing Colony,
Vatakara amsom desom, Vatakara Taluk.
34. Younger Sister Nirmala, 40 years,
Chaithanya Housing Colony,
Vatakara amsom desom, Vatakara Taluk.
35. Kalariyullathil Malathi, D/o Cheeru, 60 years,
Koyilandy Taluk, Meladi amsom desom.
36. Pilathottathil Mukundan, S/o Mathu, 52 years,
business, Vatakara amsom desom, Vatakara Taluk.
37. Sister Devi, 50 years,
Pilathottathil house, Vatakara amsom desom
Vatakara Taluk.
38. Brother Soman, 48 years,
business, Pilathottathil house, Vatakara amsom desom
Vatakara Taluk.

Defendants

Suppl.

39. Chathoth Muhammad Asharaf, S/o Moidu,
28 years, business, Nalamkandiyil house,
Puthuppanam amsom desom, Vatakara Taluk.
40. Pulikkool Ibrahim, S/o Moidu Haji,
residing at Thayyil, business, 40 years,
Puthuppanam amsom desom, Vatakara Taluk.

(Supplemental defendants No. 39 and 40 impleaded
as per Order in IA 1887/98 dated 01.12.1998)
41. Keloth Geetha, W/o Vasudevan, 42 years,
Vatakara Taluk, Vatakara amsom desom.
42. Son Abhilash, 23 years, business,
Keloth house, Vatakara amsom desom.
43. Sister Athira, 19 years,
Keloth house, Vatakara amsom desom.

(Suppl. defendants No. 41 to 43 are impleaded
as per Order in IA 1560/99 dated 24.11.1999.
Suppl. Defendants No. 41 to 43 are the legal heirs of
deceased defendant No. 29, amended as per Order in
IA 4/2024 dated 24/07/2024)

44. Kunhiparambath Sunil Kumar, S/o Nirmala, 26 years, Puthuppanam amsom desom, Vatakara Taluk.

45. Brother Sujith Kumar, 24 years, business, Kunhiparambath house, Puthuppanam amsom desom, Vatakara Taluk.

46. Sister Sabitha Kumari, 22 years, Kunhiparambath house, Puthuppanam amsom desom, Vatakara Taluk.

47. Brother Sudhesh, 20 years, Kunhiparambath house, Puthuppanam amsom desom, Vatakara Taluk.

(Supl. defendants No. 44 to 47 are impleaded as per Order in IA 186/2000 dated 05.02.2000.

Suppl. defendants No. 44 to 47 are the legal heirs of deceased defendants No. 4th and 9th defendant, amended as per Order in IA 4/2024 dated 24/07/2024)

48. Kuniyil Lakshmi, W/o Pavithran, 70 years, Palayad amsom, Pathiyarakkara desom, Vatakara Taluk.

49. Rajeesh, S/o Pavithran, 50 years, Kuniyil house, Palayad amsom, Pathiyarakkara desom, Vatakara Taluk.

50. Rajisha, D/o Pavithran, 45 years, Kuniyil house, Palayad amsom, Pathiyarakkara desom, Vatakara Taluk.

51. Saritha, D/o Pavithran, 40 years, Kuniyil house, Palayad amsom, Pathiyarakkara desom, Vatakara Taluk.

(Suppl. defendants No. 48 to 51 are the legal heirs of deceased defendant No. 1, amended as per Order in IA4/24 dated 24.07.2024)

52. Pilavulla Parambath Janu, W/o Chathu, 75 years, Kavilumpara amsom, Moilothara desom, Vatakara Taluk.

Defendants

53. Babu, S/o Chathu, 55 years,
Pilavulla Parambath, Kavilumpara amsom,
Moilothara desom, Vatakara Taluk.
54. Mohanan, S/o Chathu, 50 years,
Pilavulla Parambath, Kavilumpara amsom,
Moilothara desom, Vatakara Taluk.
(Suppl. defendants No. 52 to 54 are the legal heirs
of 7th defendant, amended as per Order in IA 4/2024
dated 24/07/2024)
55. Sathyan (died), S/o Mathu,
Punathil house, Kavilumpara amsom,
Vatakara Taluk.
56. Sreedharan (died), S/o Mathu,
Punathil house, Kallad desom, Adukkath post,
Kuttiady, Vatakara Taluk.
57. Janu (died), D/o Mathu,
Thengakallummil house, Kallad desom,
Adukkath post, Kuttiady, Vatakara Taluk.
(Suppl. defendants No. 55 to 57 are the legal heirs
of deceased defendant No.8, amended as per Order
in IA 4/2024 dated 24/07/2024)
58. Vijayalakshmi, W/o Chandanapurath Raghavan,
73 years, Chandanapurath house, Kollam post,
Koyilandy Taluk.
59. Prakasan, S/o Chandanapurath Raghavan,
54 years, Chandanapurath house, Kollam post,
Koyilandy Taluk.
60. Praveen, S/o Chandanapurath Raghavan,
51 years, Chandanapurath house, Kollam post,
Koyilandy Taluk.
61. Prajod, S/o Chandanapurath Raghavan,
48 years, Chandanapurath house, Kollam post,
Koyilandy Taluk.
(Suppl. defendants No. 58 to 61 are the legal
heirs of deceased defendant No. 9, amended as per
Order in IA 4/2024 dated 24/07/2024)
62. Rathi, W/o Sadanandan, 63 years,
Vazhayil house, Kunnummal amsom,
Vattoli desom, Vatakara Taluk.

Defendants

63. Sinith, S/o Sadanandan, 46 years,
Vazhayil house, Kunnummal amsom,
Vattoli desom, Vatakara Taluk.
64. Sanith, S/o Sadanandan, 42 years,
Vazhayil house, Kunnummal amsom,
Vattoli desom, Vatakara Taluk.
65. Rasitha, D/o Sadanandan, 38 years,
Vazhayil house, Kunnummal amsom,
Vattoli desom, Vatakara Taluk.
(Suppl. Defendants No. 48 to 65 are impleaded
as per Order in IA 2/24 dated 22/05/2024.
Suppl. defendants No. 62 to 65 are the legal
heirs of deceased defendant No. 24,
amended as per Order in IA 4/2024
dated 24/07/2024)
66. Sreelatha, D/o Janu, 65 years,
Kalariyullathil house, Meladi amsom
desom, Koyilandy Taluk.
67. Sheela, D/o Janu, 60 years,
Kalariyullathil house, Meladi amsom
desom, Koyilandy Taluk.
(Suppl. defendants No. 66 and 67 are the legal
heirs of deceased defendant No. 14)
68. Jayasree, W/o Prithwiraj, 60 years,
Kalariyullathil house, Meladi amsom
desom, Koyilandy Taluk.
69. Anirudh, S/o Prithwiraj, 30 years,
Kalariyullathil house, Meladi amsom
desom, Koyilandy Taluk.
70. Geetha, D/o Kalariyullathil Gopalan,
65 years, Kalariyullathil house,
Meladi amsom desom, Koyilandy Taluk.
71. Jeejabhay, D/o Kalariyullathil Gopalan,
68 years, Kalariyullathil house,
Meladi amsom desom, Koyilandy Taluk.
72. Ranaprathap, S/o Kalariyullathil Gopalan,
65 years, Kalariyullathil house,
Meladi amsom desom, Koyilandy Taluk.

Defendants

73. Kailas Nadh, S/o Kalariyullathil Gopalan, 50 years, Kalariyullathil house, Meladi amsom desom, Koyilandy Taluk. (Suppl. defendants No. 68 to 73 are the legal heirs of deceased defendant No. 15, amended as per Order in IA 4/2024 dated 24/07/2024)
74. Susheela, W/o Sathyan, 50 years, Thengukollummal house, Kavilumpara amsom, Vatakara Taluk.
75. Sayooj, S/o Sathyan, 28 years, Punathil house, Kavilumpara amsom, Vatakara Taluk.
76. Susmitha, D/o Sathyan, 25 years, Punathil house, Kavilumpara amsom, Vatakara Taluk. (Suppl. defendants No. 74 to 76 are the legal heirs of deceased defendant No. 55, amended as per Order in IA 4/2024 dated 24/07/2024)
77. Lakshmi, W/o Sreedharan, 65 years, Punathil house, Kallad desom, Adukkath post, Kuttiady, Vatakara Taluk.
78. Prasanth, S/o Sreedharan, 45 years, Punathil house, Kallad desom, Adukkath post, Kuttiady, Vatakara Taluk.
79. Praseena, D/o Sreedharan, 40 years, Punathil house, Kallad desom, Adukkath post, Kuttiady, Vatakara Taluk.
80. Praveena, D/o Sreedharan, 38 years, Punathil house, Kallad desom, Adukkath post, Kuttiady, Vatakara Taluk. (Suppl. defendants No. 77 to 80 are the legal heirs of deceased defendant No. 56, amended as per Order in IA 4/2024 dated 24/07/2024)
81. Babu, S/o Janu, 50 years, Thengakallummal house, Adukkath post, Kuttiady, Kavilumpara, Vatakara Taluk.
82. Sudheer, S/o Janu, 47 years, Thengakallummal house, Adukkath post, Kavilumpara, Kuttiady, Vatakara Taluk.

Defendants

83. Chandri, D/o Janu, 52 years,
Thengakallummal house, Adukkath post,
Kavilumpara, Kuttiady, Vatakara Taluk.
(Suppl. defendants No. 81 to 83 are the legal
heirs of deceased defendant No. 57, amended as
per Order in IA 4/2024 dated 24/07/2024)
84. Sheeba, D/o Krishnan, 35 years,
Thoduvayil house, Velom,
Cherukunnu post, Kuttiady Via,
Vatakara Taluk.
85. Sheena, D/o Krishnan, 30 years,
Paikkatt Parambath, Velom,
Cherukunnu post, Kuttiady Via,
Vatakara Taluk.
(Suppl. defendants No. 66 to 85 are impleaded
as per Order in IA 3/2024 dated 21/06/2024)
(Suppl. defendants No. 84 and 85 are the legal
heirs of deceased defendant No. 8, amended
as per Order in IA 4/2024 dated 24/07/2024)
- } Defendants

This suit coming on the 23rd day of July, 2024 for final hearing before me in the presence of Sri. C. R. Subramanian, Smt. G.P. Sharmila Varma, Smt. C.H. Naina, Sri. E.V. Lijeesh and Smt. Hridya S. Advocates for the plaintiffs and of Sri.K.K. Vijayan, Advocate for the defendants No. 1 and 2, Sri. K.N. Subramanian, Advocate already filed vakalath for defendants No. 7 and 8, Counsel no more, defendants No. 7 and 8 not entered into appearance, Smt. K. Vasantha, Advocate already filed vakalath for D9 and D15, Counsel no more, defendants No. 9 and 15 not entered in appearance, Sri. B. Krishnan, Advocate for defendants No. 10 to 14 and 16 to 22, Sri. Kaliyath Aboobacker, advocate for defendants No. 25, Sri. V. Ramdas, Advocate for defendants No. 39 and 40, Smt. Theertha R.K. and Sri. Amal dev, Advocates for defendants No. 52,53,54,58,59,60,61,66 to 85. Other defendants upto D47 called absent and set exparte. Defendants No. 48 to 51 and 66 to 85 not entered into appearance and having stood over to this day for consideration, this Court delivered the following.

J U D G M E N T

This is a suit for partition and separate possession. The above suit was earlier dismissed by this court as per the judgment dated 31.7.2020 on two grounds: (i) it is a new lease deed and (ii) there is adverse possession. Being aggrieved by the judgment and decree of this court, the plaintiff and some of the supporting defendants filed appeal before the Sub Court, Vatakara as Appeal Suit No.92/2020. The Hon'ble Addl. District Court, Vatakara dismissed A.S. 92/2020 as per the judgment dated 23.11.2006, and confirmed the decree passed by the trial court. Being aggrieved by the judgment of the appellate court, the legal heirs of the original plaintiff along with some other supporting defendants preferred appeal as RSA No.693/2007 before the Hon'ble High Court of Kerala. The Hon'ble High Court of Kerala as per the judgment dated 29.11.2018 allowed the appeal stating that the finding made by both the trial court as well as the first appellate court is liable to be set aside as there are serious omissions to apply factual and legal issues in proper perspective. Further, as per the order in RP.No.417/2019 dated 10.08.2023, the Hon'ble High Court of Kerala, directed this trial court to pass a preliminary decree in accordance with law. So, the case was remanded back by the Hon'ble High Court of Kerala to this trial court only for the purpose of passing a preliminary decree.

2. The plaint averments, in brief, are as follows:- The suit is instituted by the plaintiff for partition and separate possession of plaint B schedule property between the plaintiffs and defendants. The plaintiff wants to divide the plaint B schedule property including the house situated therein into 360 equal shares and the plaintiff is entitled to get 40/360 shares. He prays for partition and separate possession of his respective shares in metes and bounds. Hence, this suit was filed.

3. As the defendant No.1, 4, 7, 8, 9, 24 and 29 died, the supplemental defendants No.48 to 65 are impleaded as per the order in IA 2/2024 dated 22.5.2024. Similarly, as the defendants No.14, 15, 55, 56 and 57 died, the supplemental defendants No.66 to 83 are impleaded as per the order in IA 03/24 dated 21.6.2024. Further as per the same IA 03/24, supplemental defendant No.84 and 85 are impleaded as the legal heirs of the deceased D8 since they were omitted to be impleaded along with supplemental defendant No.55 to 57 as per IA 02/2024.

4. Heard the counsel for the plaintiff and the defendants.

5. Since the defendants have no objection in passing the preliminary decree, this court is of the opinion that the plaint B schedule property is partible and the preliminary decree is passed as follows:-

- 1) **The plaint B schedule property is divided into 360 equal shares.**
- 2) **The plaintiffs No.2 to 6 are together entitled to 40/360 shares.**
- 3) **The defendants No.2 and 48 to 51 are together entitled to 120/360 shares.**
- 4) **The defendants No.52 to 54 are together entitled to 40/360 shares.**
- 5) **The defendants No.74 to 85 together are entitled to 40/360 shares.**
- 6) **The defendants No.58 to 61 are together entitled to 30/360 shares.**
- 7) **The defendants No.10 to 13 are together entitled to 30/360 shares.**

- 8) The defendants No.66 and D67 are together entitled to 12/360 shares.
- 9) The defendants No.68 to 73 are together entitled to 12/360 shares.
- 10) The defendants No.16 to 18 are together entitled to 12/360 shares.
- 11) The defendants No.19 to 22 are together entitled to get 12/360 shares.
- 12) The defendant No.35 is entitled to get 12/360 shares.
- 13) The parties shall be entitled to future mesne profits from D2 and D48 to D51 from the date of suit charged on their share, the quantum to be decided in final decree proceedings.
- 14) The costs of the suit of sharers namely plaintiffs and defendants 1, 2, 7 to 22, 35, 48 to 54, 58 to 61 and 66 to 85 shall come out of the estate and others to bear their own costs.
- 15) The case is adjourned to 24.08.2024 to take steps for passing a final decree.

For taking steps under Order 20 Rule 18 of C.P.C.

(Dictated to C.A, typed by him in Office Computer, corrected and pronounced by me in Open Court, on this the 24th day of July, 2024)

Sd/-

MUNSIFF, VATAKARA.

Plaintiff's Witness : NIL

Plaintiff's Exhibits:

A1 28.10.1927 : Registration copy of Kozhu deed executed by Krishna Kurup in favour of Chappila.

Defendant's Witness :

DW1 04.07.2000 : Raveendran, S/o Kunhikannan.

Defendant's Exhibits :

- B1 09.05.1944 : Registration copy of Kozhu deed executed by Rama Kurup.
- B2 26.03.1945 : Registration copy of Kuzhikkanam deed executed by Matha in favour of Kelappan.
- B3 20.01.1965 : Tax receipt issued to Matha for the year 1963-64 by Village Officer, Puthuppanam.
- B3(a) 07.12.1965 : Tax receipt for the year 1965-66 issued by Village Officer, Puthuppanam.
- B3(b) 26.10.1966 : Tax receipt for the year 1966-67 issued by Village Officer, Puthuppanam.
- B3(c) 16.10.1967 : Tax receipt for the year 1967-68 issued by Village Officer, Puthuppanam.
- B4 19.12.1967 : Registered Assignment deed executed by Matha in favour of D1 and D2.
- B5 09.12.1986 : Tax receipt for the year 1986-87 issued by Village Officer, Puthuppanam to Pavithran.
- B5(a) 09.12.1986 : Tax receipt for the year 1986-87 issued by Village Officer, Puthuppanam to Raveendran.
- B6 23.02.1977 : Purchase certificate issued by Vatakara Land Tribunal to Pavithran and Raveendran.
- B7 07.11.1989 : Registered partition deed between D1 and D2.
- B8 27.11.1996 : Tax receipt for 1996-97 issued by Nadakkuthazha Village Officer to D1.
- B8(a) 21.04.1997 : Tax receipt for 1997-98 by Nadakkuthazha Village Officer.
- B8(b) 24.02.1993 : Tax receipt for the year 1992-93 issued by Village Officer, Nadakkuthazha.
- B8(c) 23.03.1991 : Tax receipt for the year 1990-91 issued by Village Officer, Nadakkuthazha.
- B9 23.03.1991 : Tax receipt for the year 1990-91 issued by Village Officer, Nadakkuthazha to Raveendran.

- B9(a) 20.03.1992 : Tax receipt for the year 1991-92 issued by Village Officer, Nadakkuthazha.
- B9(b) 24.02.1993 : Tax receipt for the year 1992-93 issued by Village Officer, Nadakkuthazha.
- B9(c) 04.03.1994 : Tax receipt for the year 1993-94 issued by Village Officer, Nadakkuthazha.
- B10 18.12.1997 : Registered Assignment deed executed by Pavithran in favour of Muhammad Ashraf.

Sd/-

MUNSIEF, VATAKARA.