



2025:KER:84493

IN THE HIGH COURT OF KERALA AT ERNAKULAM

C. R.

PRESENT

THE HONOURABLE MR. JUSTICE SATHISH NINAN

&

THE HONOURABLE MR. JUSTICE P. KRISHNA KUMAR

FRIDAY, THE 7TH DAY OF NOVEMBER 2025 / 16TH KARTHIKA, 1947

RFA NO. 11 OF 2017

AGAINST THE JUDGMENT DATED 30.08.2016 IN OS NO.17 OF 2015 OF

SUB COURT, VADTAKARA

APPELLANT/DEFENDANT NO.1:

VENUGOPAL.K.VELOTH,
S/O.LEELA, AGED 66 YEARS, RETIRED 9A/81 WEA NEAR CHANNA
MARKET, KAROL BHAG, NEW DELHI 110005.

BY ADV SRI.MAHESH V RAMAKRISHNAN

RESPONDENTS/PLAINTIFFS & DEFENDANTS NOS.2 & 3:

- 1 MAHILAMANI,
D/O.PARVATHI, AGED 86 YEARS, HOUSE WIFE, HOUSE NO.30,
FRENCH EMBASSY, CHANAKYAPURA, NEW DELHI 110021.
- 2 ROHIN KUMAR,
S/O.MOHILAMANI, AGED 63 YEARS, HOUSE NO.30,
FRENCH EMBASSY, CHANAKYAPURAM, NEW DELHI 110021.
- 3 RAJARAM,
S/O.MAHILAMANI, AGED 65 YEARS, CHERVAYIL HOUSE, 5/795
B, NKRA 114, FARI ROAD, NORTH KALAMASSERY, ERNAKULAM
FOR HIM AND POWER OF ATTORNEY HOLDER P1 & P2 BY DEED
DATED 20.11.2013 683104.



- 4 SAJITHKUMAR PANDAREDOUTIL SANDEEP,
S/O.SREEDHARAN PANDAREDOTIL, AGED YEARS, 6, AVENUE
CHATEAU- DU- LOIR 92400, COURBEVOIE, FRANCE BY AGENT
DR. NATARAJAN KANNOTH, AGED 69 YEARS, RESIDING AT
CHOLAM VAYAL, POST VADAKARA, AMSOM DESOM, VADAKARA
UNDER DEAL OF POWER OF ATTORNEY
DATED 19.03.2014 673101.
- 5 DAMAYANTHI,
W/O.BALAKRISHNAN, AGED 74 YEARS, HOUSE WIFE,
KOVUKKAL HOUSE, POST AZHIYOR 673309.
- 6 PRASEEJ KUMAR,
S/O.BALAKRISHNAN, AGED 45 YEARS, SYSTEM ANALYST,
KOVUKKAL HOUSE, NEAR MAHE RAILWAYSTATION,
POST AHIYOR 673309.
- 7 PRASEENA,
D/O.BALAKRISHNAN, AGED 43 YEARS, ADVOCATE,
KOVUKKAL HOUSE, NEAR MAHE RLY STATION,
P.O. AZHIYOR 673309.
- 8 JYOLSNA,
D/O.PADMANABHAN, AGED 67 YEARS, PENSIONER, JADE,
AISHWARYA ROAD, KOZHIKODE 673020
- 9 NAGANDRANATH
S/O.PADMANABHAN, AGED 66 YEARS, RETD, FLAT B2,
ASHIRVAD, HINDUSTAN PARK, KOLKATTA, WEST BENGAL 700001.
- 10 KUMDWATHY,
D/O.PADMANABHAN, AGED 63 YEARS, RTD., KRISHNA,
CHATHANGATT ROAD, PALARIVATTOM, KOCHI 682025.
- 11 VANDANA,
D/O.LATE URMILA, AGED 37 YEARS, HOUSEWIFE, FLAT NO.7,
ASHISH PARK, SECTOR 24, PLOT 133/134, PRADHIKARAN,
NIGADI, PUNE 411044.
- 12 VINATHA,
W/O.K.K. RAJENDRAN, AGED 54 YEARS, HOUSE WIFE LAKSHMI,
POOZHICKUNNATH, KOLLAM, KOYILANDY, KOZHIKODE FOR HER
AND AS AGENT BY DEED OF POWER OF ATTORNEY DATED
01.04.2014 FOR PLAINTIFFS 8 & 10 AND DATED 31.03.2014
FOR PLAINTIFF 9 -673305.



- 13 PADMAVATHI,
D/O.SUBHADRA, AGED 77 YEARS, PENSIONER, ARCHANA, POST
PINARAYI, TELLICHERRY 670741.
- 14 NAMITHA,
D/O.R.K.VIJAYAN, AGED 45 YEARS, HOUSEWIFE, ARCHANA,
POST PINARAYI, TERLLICHERRY 670741.
- 15 NEELIMA,
D/O.R.K. VIJAYAN, AGED 42 YEARS, ARCHANA,
POST PINARAYI, TELLICHERRY 670741.
- 16 KOCHULAKSHMI,
D/O.SUBHADRA, AGED 75 YEARS, PENSIONER, SREYAS, UKS
ROAD, KOZHIKODE 673001.
- 17 JANAKI,
D/O.SUBHADRA, AGED 73 YEARS, PENSIONER, ANUPAMA,
THAVALAKKULAM ROAD, BEPPUR NORTH POST,
KOZHIKODE 673015.
- 18 BIJU V,
S/O.P.VASU, AGED 48 YEARS, BUSINESS, ANUPAMA,
THAVALAKKULAM ROAD, BEPPUR NORTH POST, KOZHIKODE, FOR
HIM AND AS AGENT BY DEED OF POWER OF ATTORNEY DATED
11.06.2014 FOR PLAINTIFFS 13, 16, 17 DATED 18.06.2014
FOR 14TH PLAINTIFF AND DATED 05.06.2014 FOR 15TH
PLAINTIFF 673015.
- 19 SOMALATHA GOPALAKRISHNAN,
D/O.POOZHIKKUNNATH DAMODARAN, AGED 61 YEARS, HOUSE
WIFE, 406, ASHOKA WINDOWS, 5TH MAIN, MALLESH PALAYA,
BANGALORE 560075.
- 20 KANAK JINAN,
D/O.POOZHIKKUNATH DAMODARAN, AGED 56 YEARS, HOUSE WIFE,
KINARA, AKG ROAD, THENGOD, KAKKANAD, KOCHI 682030.
- 21 UDAYASHANKAR DAMODARAN,
S/O.POOZHIKKUNNATH DAMODARAN, AGED 55 YEARS, PROFESSOR,
FLAT NO. 78, XLRI CAMPUS, CH AREA (E), POST, DIXTUPUR,
JAMSHADPUR 831001.



- 22 SHAMSHANKAR DAMODARAN,
S/O.POOZHIKUNNATH DAMODARN, AGED 53 YEARS, ENGINEER,
ASPEN A04, TATA SHERWOOD, BASAVA NAGAR ROAD,
BANGALORE 560037.
- 23 JAYASANKAR DAMODARAN,
S/O.POZHIKUNNATH DAMODARAN, AGED 59 YEARS, BUSINESS,
THANAL, NO. 8, H.B.PANABALLI NAGAR, KOCHI 36 FOR HIM
AND AS AGENT BY DEED OF POWER OF ATTONEY DATED
18.01.2014 FOR 19TH PLAINTIFF, DATED 17.03.2014 FOR
20TH PLAINTIFF, DATED 31.03.2014 FOR 21ST PLAINTIFF AND
DATED 09.05.2014 FOR 22ND PLAINTIFF 682036.
- 24 BALAGOPAL.K VELLOTH,
S/O.LEELA, AGED 64 YEARS, RETD., 4/521 A, JOSEPH ROAD,
P.O.BEACH, KOZHIKODE 673032.
- 25 KRISHNA GOPAL K,
VELLOTH, S/O.LEELA AGED 60 YEARS, RETD, ARADHANA,
BEHIND ARADHANA BAKERY, PUTHIYA NIRATH, ELATHUR,
KOZHIKODE 673303.

BY ADVS.
SHRI.B.KRISHNAN
SHRI.R.PARTHASARATHY

THIS REGULAR FIRST APPEAL HAVING COME UP FOR HEARING ON
07.11.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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C. R.

SATHISH NINAN &
P. KRISHNA KUMAR, JJ.

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R.F.A. No.11 of 2017

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Dated this the 7th day of November, 2025

J U D G M E N T

Sathish Ninan, J.

The preliminary decree in a suit for partition is under challenge by the first defendant.

2. The plaint schedule consists of two items of properties. With regard to the partibility and shares of plaint item No.2 there is no dispute. In this appeal we are concerned only with the plaint item No.1 (hereinafter referred to as “the property”).

3. The property originally belonged to one Kadungon, the predecessor-in-interest of the parties under Ext.B1 Partition Deed of the year 1911. Thereafter on 30.08.2011 he executed Ext.A2 Will, bequeathing the property to his wife-Narayani, children and grand children. The plaintiffs seek for partition and separate possession of their 5/6 shares out of the property.



-: 2 :-

4. Defendants 1 to 3 contended that the property is not partible. It was contended that Narayani, the wife of Kadungan had given the property on 'melpattam' to her son-in-law, Anandan (husband of her daughter Lakshmi), and while so enjoying, she executed Ext.B3 document dated 25.04.1938, conferring on him the right to sink a well and construct a house in a portion of the property. Later, on 23.01.1943, Anandan conveyed the entire property to his wife Lakshmi under Ext.B4 Sale Deed dated 23.01.1943. Under Ext.B5 Sale Deed dated 06.05.1972, Lakshmi conveyed the property to the first defendant. Thus the first defendant claims exclusive right over the property.

5. The trial court negatived the claim of exclusive right by the first defendant, and passed a preliminary decree for partition.

6. We have heard Sri.Mahesh V. Ramakrishnan, the learned counsel for the appellant and Sri.B.Krishnan, the learned counsel for the contesting respondents.

7. The points that arise for consideration in this appeal are :-



-: 3 :-

- (i) Has the first defendant obtained exclusive right over the property?*
- (ii) Is the property partible?*
- (iii) Does the decree and judgment of the trial court warrant any interference?*

8. It is not in dispute that if the exclusive right claimed by the first defendant is not proved, the property is liable to be partitioned among the parties. It is also not in dispute that the property is a Tarwad/Tavazhi property. The claim for exclusive right of the first respondent is founded on the following:-

(i) A 'melpattam' right over the property granted by Narayani to her son-in-law Anandan (husband of her daughter Lakshmi).

(ii) Ext.B3 document permitting Anandan to sink a well and construct a house in a portion of the property.

(iii) Ext.B4 conveyance of the property by Anandan to his wife Lakshmi tracing right to Melpattam and Ext.B3.

(iv) Ext.B5 conveyance of the property by Lakshmi to the first defendant.

We proceed to analyse each of the above transactions.



-: 4 :-

9. Firstly coming to the Melpattam right of Anandan, the grant of such right earlier is acknowledged in Ext.B3 document. 'Melpattam' is only a right to take usufructs from the trees in the property. It does not create interest over the land. In *Krishnan Nair & anr. v. Abdu [AIR 1965 Ker. 39 (F.B)]*, this Court held,

"A melpattom (literally, a lease of what is above the surface) is a lease of trees with no interest in the land, ordinarily enuring for one year- see Sundara Iyer's, Malabar and Aliyasanthana Law, pages 290 and 453 and C. Ramachandra Aiyar's, A Manual of Malabar Law, page 42."

The right conferred under a 'melpattam' is only the right to take usufructs from the trees. Though the learned counsel for the appellant would contend that possession was granted thereunder, the term 'possession' has to be understood in the context and the purpose for which the arrangement was made. As noted above, it is limited for the purpose of taking usufructs from the trees. There is no creation of interest over the land. The possession under the arrangement is only for the purpose of taking usufructs from the trees. This is affirmed by the recitals in Ext.B4 wherein, while tracing the rights, referring to the marupattam it is stated, "എനിക്ക് കാലാനുഭവം അടക്കി എടുപ്പാനുള്ള പാട്ടു നടപ്പു



-: 5 :-

കൈവശാവകാശവും” meaning the right to take the crops/income from the property.

10. Under the Madras Marumakkathayam Act to grant a lease for more than twelve years or of a lease having fixity of tenure, the written consent of majority of the major members of the Tarawad was necessary [See: *V. P. Anandavally Amma v. V. P. Premalatha Kurup & anr. (1991 (1) KLJ 790)*]. Admittedly there was no such consent. The grant was not for a limited period. Therefore, there could not be a valid lease. At any rate, the arrangement being only in the nature of a right to take usufructs, such issues do not arise. We only need to notice that the melpattam arrangement could not negate the rights of the other members of the family and that it did not create any interest over the land.

11. Coming to Ext.B3, thereunder, all that is given is a permission to construct a house and to sink a well in a portion of the property. The permission granted is on a specific condition to surrender the property on receiving the value of such improvements. Therefore, Ext.B3 also did not create any interest in the property defeating the rights of the other co-



-: 6 :-

owners.

12. Under Ext.B4, all that Anandan conveyed and could convey is only the Melpattam rights and the right obtained under Ext.B3. The conveyance thereunder is in favour of his wife, who is a co-sharer.

13. Under Ext.B5 Sale Deed Lakshmi has purported to convey her share in the property to the first defendant. When admittedly the property is a Tarawad/thavazhi property, an undivided member could not alienate her purported share in the property[See: *Ammalu Amma v. Lakshmi Amma & ors. (1966 KLT 32)*]. Hence Ext.B5 is of no consequence.

14. From the above it can be seen that the first defendant could not raise any claim except that he is in possession of the property under the Melpattam and the permissive right granted under Ext.B3. As noticed by us supra, both rights do not operate against the rights of the other co-owners. The first defendant who is a co-sharer is in possession. There is no plea of adverse possession and ouster. Even such a plea could not be maintained in the light of the categorical admission by Lakshmi in Ext.B5 Sale Deed that she has only a co-ownership property. That itself



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-: 7 :-

implies the acknowledgment of the title of the other co-owners in respect of the property. In fact, in Ext.B5 the rights of the other co-sharers are specifically acknowledged. Hence even a plea of adverse possession could not be maintained.

15. The property is liable to be partitioned between the sharers. The decree and judgment of the trial court warrant no interference.

We find no merit in the appeal. Appeal fails and is dismissed.

Sd/-
SATHISH NINAN
JUDGE

Sd/-
P. KRISHNA KUMAR
JUDGE

kns/-

//True Copy//

P.S. To Judge