IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE EASWARAN S.

THURSDAY, THE 27TH DAY OF MARCH 2025 / 6TH CHAITHRA, 1947

RFA NO. 52 OF 2009

AGAINST THE JUDGMENT DATED 19.12.2002 IN OS NO.79 OF 1989 OF PRINCIPAL SUB COURT, KOLLAM

APPELLANTS/ADDITIONAL D72 TO D74:

1 K.SAVITHRI, W/O.KARUNAKARAN (D33), ARANINNAVILA VEEDU,KOTTAPPURAM,, PARAVOOR P.O., KOLLAM DISTRICT.

2 PADMAKUMAR, S/O.KARUNAKARAN ARANINNAVILA VEEDU,KOTTAPPURAM,, PARAVOOR P.O., KOLLAM DISTRICT.

3 PADMAKUMARI, D/O.KARUNAKARAN ARANINNAVILA VEEDU, KOTTAPPURAM,, PARAVOOR P.O., KOLLAM DISTRICT.

BY ADVS.
N.V.SANDHYA
MANU VYASAN PETER
P.B.KRISHNAN(K/1193/1994)
S.V.BALAKRISHNA IYER (SR.)(B-75)
P.B.SUBRAMANYAN(K/1145/2009)
SABU GEORGE(K/000711/1998)
B.ANUSREE(K/000951/2016)
AISWARYA MOHAN(K/274/2020)

RESPONDENTS/PLAINTIFFS 1 TO 10, D1 TO D71, D75 TO D87 AND ADDITIONAL PLAINTIFFS 13 AND 14:

1 ANANDA BHAI D/O. UMMINI, (DIED 18.08.2006), LRS - ADDITIONAL D78 TO D85, VIDE IA 3482/06, DATED 04.08.2007).

2 SUBHADRA W/O. VIDYADHARAN
(S/O.UMMINI), AGED 60 YEARS, ARANINNAVILA VEEDU,,
PAMPURAM CHERRY, KALLUVATHUKKAL P.O., KOLLAM
DISTRICT.

3 SULOCHANA D/O. VIDYADHARAN
AGED 40 YEARS, ARANINNAVILA VEEDU, PAMPURAM
CHERRY, KALLUVATHUKKAL P.O., KOLLAM DISTRICT.

4 SATHEESAN S/O. VIDYADHARAN
AGED 34 YEARS, ARANINNAVILA VEEDU, PAMPURAM
CHERRY, KALLUVATHUKKAL P.O., KOLLAM DISTRICT.

5 JAGADAMMA, D/O. VIDYADHARAN
AGED 29 YEARS, ARANINNAVILA VEEDU,PAMPURAM
CHERRY, KALLUVATHUKKAL P.O., KOLLAM DISTRICT.

6 SOBHANA, D/O. VIDYADHARAN
AGED 24 YEARS, ARANINNAVILA VEEDU, PAMPURAM
CHERRY, KALLUVATHUKKAL P.O., KOLLAM DISTRICT.

7 V.VIJAYANANDAN, S/O. VIDYADHARAN
AGED 23 YEARS, ARANINNAVILA VEEDU, PAMPURAM
CHERRY, KALLUVATHUKKAL P.O., KOLLAM DISTRICT.

8 V.SATHYASEELAN D/O. VIDYADHARAN
AGED 20 YEARS, ARANINNAVILA VEEDU, PAMPURAM
CHERRY, KALLUVATHUKKAL P.O., KOLLAM DISTRICT.

9 KUNCHUKALI SARADA (P9) (DIED 08.02.2003
LRS ADDITIONAL P 13 & P 14 VIDE IA 2760/06, DATED
04.08.2007).

10 V.SUDEVAN, S/O. VIDYADHARAN
(D36 WHO WAS TRANSPOSED), ARANINNAVILA VEEDU,
PAMPURAM CHERRY, PARIPPALLY P.O., KOLLAM
DISTRICT.

11 RAMAN, S/O. GOPALAN
(D1) (DIED), LRS D61 TO D63.

12 VASUDECAN (D2) S/O. KESAVAN
(DIED), LRS D64 TO D67.

13 SADANANDAN (D3) S/O. KESAVAN (DIED)
LRS D68 TO D71.

14 BHASURANGI, D/O. BHAVANI
AGED 45 YEARS, SASI MANDIRAM, VALATHUNGAL,
AKKOLIL CHERRY, MAYYANAD VILLAGE.

15 HARIDASAN, S/O. GOPALAN
AGED 35 YEARS, SASI MANDIRAM, VALATHUNGAL,
AKKOLIL CHERRY, MAYYANAD VILLAGE.

16 SASIDHARAN, S/O. GOPALAN, AGED 32 YEARS
SASI MANDIRAM, VALATHUNGAL, AKKOLIL CHERRY,,
MAYYANAD VILLAGE.

17 RADHAMONY, D/O. BHAVANI
AGED 30 YEARS, SASI MANDIRAM, VALATHUNGAL,
AKKOLIL CHERRY, MAYYANAD VILLAGE.

18 GOPALAN, (DIED)
S/O. VELU, AGED 60 YEARS, SUKU MANDIRAM,
CHOZHIYAKKODU CHERRY, KULATHUPPUZHA VILLAGE.

(R18 DIED ISSUELESS AND THAT HE HAS NO LEGAL HEIRS AS PER ORDER DATED 18/12/2009 IN IA 4508/09)

19 THANKAMMA D/O. VELU
AGED 50 YEARS, JAYANTHI BHAVANAM, SUKU MANDIRAM,,
CHOZHIYAKKODU CHERRY, KULATHUPPUZHA VILLAGE.

20 BHARGAVI (DIED) D/O. VELU
(HAD ASSIGNED RIGHTS TO D37).

21 ANANDAN, S/O. VELU AGED 55 YEARS
KODUMOOTTIL VEEDU, KOTTAKKARUM CHERRY, PARIPALLY.

22 BHARATHY, D/O. VELU
(HAD ASSIGNED RIGHTS TO D37).

23 AMMAKUNJU (DIED)
D/O. KOCHUPENNU, LRS (D20).

24 KOCHUNARAYANAN, (STRUCK OFF)

S/O. NEELAKANDAN, AGED 65 YEARS, ARANINNAVILA VEEDU, KOTTAPPURAM, PARAVOOR P.O., KOLLAM DISTRICT.

(THE NAME OF THE 24TH RESPONDENT IS STRUCK OFF FROM THE PARTY ARRAY AS PER ORDER DATED 16/03/2010 IN IA 1077/2010)

25 SAKTHIDARAN, S/O. NEELAKANDAN
AGED 55 YEARS, ARANINNAVILA VEEDU, KOTTAPPURAM, PARAVOOR P.O., KOLLAM DISTRICT.

26 GOPINADAN, S/O. NEELAKANDAN
AGED 52 YEARS, ARANINNAVILA VEEDU, KOTTAPPURAM, PARAVOOR P.O., KOLLAM DISTRICT.

27 CHANDRAN S/O. NEELAKANDAN
AGED 47 YEARS, ARANINNAVILA VEEDU, KOTTAPPURAM, PARAVOOR P.O., KOLLAM DISTRICT.

28 SASIDHARAN S/O. NEELAKANDAN
AGED 45 YEARS (GOVT.SERVANT), ARANINNAVILA VEEDU, KOTTAPPURAM, PARAVOOR P.O., KOLLAM DISTRICT.

29 SANTHA, D/O. NEELAKANDAN
AGED 43 YEARS, ARANINNAVILA VEEDU, KOTTAPPURAM, PARAVOOR P.O., KOLLAM DISTRICT.

30 SATHYAN, S/O. NANU
AGED 52 YEARS, ARANINNAVILA CHALIL VEEDU, OZHUKUPARA, NEDUNGOLAM P.O., PARAVOOR,, KOLLAM DISTRICT.

31 KOCHUPENNU BHARGAVI, (DELETED)
AGED 78 YEARS
ARANINNAVILA CHALIL VEEDU, OZHUKUPARA,, NEDUNGOLAM P.O., PARAVOOR, KOLLAM DISTRICT.

32 LAKSHMI, (DELETED)
D/O. KOCHUPENNU, AGED 66 YEARS
ARANINNAVILA CHALIL VEEDU, OZHUKUPARA, NEDUNGOLAM P.O., PARAVOOR, KOLLAM DISTRICT.

33 GOPALAN, (DELETED)

S/O. NEELAMBI & KOCHUPENNU
AGED 72 YEARS, ARANINNAVILA CHALIL VEEDU,,
OZHUKUPARA, NEDUNGOLAM P.O., PARAVOOR,, KOLLAM
DISTRICT.

34 RAVINDRAN, S/O. NARAYANAN
AGED 36 YEARS, ARANINNAVILA CHALIL VEEDU,
OZHUKUPARA, NEDUNGOLAM P.O., PARAVOOR, KOLLAM
DISTRICT.

35 SURENDRAN, S/O. NARAYANAN
AGED 34 YEARS, ARANINNAVILA CHALIL VEEDU,
OZHUKUPARA, NEDUNGOLAM P.O., PARAVOOR, KOLLAM
DISTRICT.

36 GOURI D/O. KUCHUKALI (DIED)
LRS D52 TO D60.

37 SAROJINI (DIED - LRS ADDL.R96 TO 99 IMPLEADED)
D/O. KUNJUKALI KALYANI
(TEACHER), AGED 54 YEARS, KALLIL VEEDU,
NEDUNGOLAM, P.O., PARAVOOR, KOLLAM DISTRICT.

38 SARASWATHY (DELETED)
D/O. KUNJUKALI KALYANI
AGED 45 YEARS, (GOVT. SERVENT), T.C.29/727,
PUNNAPURAM ROAD, KAITHAMUKKU, THIRUVANANTHAPURAM.

39 SULOCHANA (DIED - LRS, ADDL.R100 TO R102
IMPLEADED)
D/O. KUNJUKALI KALYANI
AGED 47 YEARS, KALLIL VEEDU, NEDUNGOLAM P.O.,
PARAVOOR, KOLLAM DISTRICT.

40 RAVEENDRAN (DIED - LRS IMPLEADED)
S/O. KUNJUKALI KALYANI.
AGED 53 YEARS, KALLIL VEEDU, NEDUNGOLAM P.O.,
PARAVOOR, KOLLAM DISTRICT.

41 SOMAN, S/O. KUNJUKALI KALYANI
AGED 48 YEARS, KALLIL VEEDU, NEDUNGOLAM P.O.,
PARAVOOR, KOLLAM DISTRICT.

42 RAMACHANDRAN, S/O. GOPALAN
AGED 38 YEARS, (GOVT. SERVANT), T.C.29.727,
KALLIL VEEDU, NEDUNGOLAM P.O., PARAVOOR,, KOLLAM
DISTRICT.

43 KARUNAKARAN, S/O. PADMANABHAN (DIED)
LRS D72 TO D77).

44 V.CHANDRASENAN, S/O. VIDYADHARAN
ARANINNAVILA VEEDU, PAMPURAM CHERRY,,
KALLUVATHUKKAL P.O., KOLLAM DISTRICT.

45 V.JAYADEVAN, S/O. VIDYADHARAN
ARANINNAVILA VEEDU, PAMPURAM CHERRY,,
KALLUVATHUKKAL P.O., KOLLAM DISTRICT.

46 BHASI, S/O. BASKARAN, AGED 32 YEARS
RETHI MANDIRAM, MUNDAYIL CHERRY, VARKALA VILLAGE.

47 SURENDRAN, AGED 35 YEARS (TENANT)
ARANINNAVILA VEEDU, KOTTAPURAM CHERRY, PARAVOOR
P.O., KOLLAM DISTRICT.

48 SREEKUMAR (DELETED)
AGED 30 YEARS (TENANT)
ARANINNAVILA VEEDU, KOTTAPURAM CHERRY, PARAVOOR
P.O., KOLLAM DISTRICT.

49 SASIDHARAN (DELETED)
AGED 35 YEARS (TENANT)
ARANINNAVILA VEEDU, KOTTAPURAM CHERRY, PARAVOOR
P.O., KOLLAM DISTRICT.

50 SUGATHAN (DELETED)
AGED 28 YEARS (TENANT)
ARANINNAVILA VEEDU, KOTTAPURAM CHERRY, PARAVOOR
P.O., KOLLAM DISTRICT.

51 SUGUNAN (DELETED)
AGED 39 YEARS (TENANT)
ARANINNAVILA VEEDU, KOTTAPURAM CHERRY, PARAVOOR
P.O., KOLLAM DISTRICT.

52 NAZEEM AGED 36 YEARS (TENANT)
ARANINNAVILA VEEDU, KOTTAPURAM CHERRY, PARAVOOR P.O., KOLLAM DISTRICT.

53 GOPALAN AGED 38 YEARS (TENANT)
ARANINNAVILA VEEDU, KOTTAPURAM CHERRY, PARAVOOR P.O., KOLLAM DISTRICT.

54 SHAMSUDEEN (DELETED)
AGED 47 YEARS (TENANT)
ARANINNAVILA VEEDU, KOTTAPURAM CHERRY, PARAVOOR P.O., KOLLAM DISTRICT.

55 BAHUDEEN (DELETED)
AGED 50 YEARS (TANANT)
ARANINNAVILA VEEDU, KOTTAPURAM CHERRY, PARAVOOR P.O., KOLLAM DISTRICT.

56 MOHANAN (DELETED)
AGED 37 YEARS (TENANT)
ARANINNAVILA VEEDU, KOTTAPURAM CHERRY, PARAVOOR P.O., KOLLAM DISTRICT.

57 GOVINDHANKUTTY AGED 49 YEARS (TENANT)
ARANINNAVILA VEEDU, KOTTAPURAM CHERRY, PARAVOOR P.O., KOLLAM DISTRICT.

58 DR.S.RAJU (DELETED)
AGED 38 YEARS (TENANT)
ARANINNAVILA VEEDU, KOTTAPURAM CHERRY, PARAVOOR P.O., KOLLAM DISTRICT.

59 P.GANGADHARAN PILLAI (DIED - ADDL.R92 TO R95 IMPLEADED)
SAKTHI VIHAR, KALAKKODE CHERRY, POOTHAKKULAM P.O., KOLLAM DISTRICT.

60 SARASWATHY AMMA
W/O. GANGADHARAN PILLAI, SAKTHI VIHAR, KALAKKODE CHERRY, POOTHAKKULAM P.O., KOLLAM DISTRICT.

61 RAJAMMA, (DIED - LRS IMPLEADED)
D/O. GOURI, NATARAJ BHAVAN
KALLUVATHUKKAL P.O., KOLLAM DISTRICT.

62 M.S.ANAND (DIED - LRS IMPLEADED)
S/O. GOURI, SANTHI BHAVAN
KOONAYIL, PARAVOOR P.O., KOLLAM DISTRICT.

63 SARASAMMA D/O. GOURI SANTHI BHAVAN
KOONAYIL, PARAVOOR P.O., KOLLAM DISTRICT.

64 MADHAVAN CHANDRA MOHAN (DELETED)
S/O. GOURI
SANTHI BHAVAN, KOONAYIL, PARAVOOR P.O., KOLLAM DISTRICT.

(R31 TO R33, 38, 48 TO 51, 54 TO 56, 58 AND R64 ARE DELETED FROM THE PARTY ARRAY AT THE RISK OF THE APPELLANTS AS PER ORDER DATED 18/12/2009 IN IA 4508/2009)

65 MADHAVAN GOPINATHAN, (DIED - LRS IMPLEADED)
S/O. GOURI
SANTHI BHAVAN, KOONAYIL, PARAVOOR P.O., KOLLAM DISTRICT.

66 MADHAVAN RAVEENDRAN, (DIED - LRS IMPLEADED),
S/O. GOURI
SANTHI BHAVAN, KOONAYIL, PARAVOOR P.O., KOLLAM DISTRICT.

67 GOURI OMANA, (DIED - LRS IMPLEADED)
D/O. GOURI, SANTHI BHAVAN, KOONAYIL, PARAVOOR P.O., KOLLAM DISTRICT.

68 MADHAVAN SOMAN, S/O. GOURI
SANTHI BHAVAN, KOONAYIL, PARAVOOR P.O., KOLLAM DISTRICT.

69 MADHAVAN HARIDASAN, S/O. GOURI
SANTHI BHAVAN, KOONAYIL, PARAVOOR P.O.,, KOLLAM DISTRICT.

70 SAVITHIRI, W/O.RAMAN GOPALAN
AGED 71 YEARS, SATHEESH MANDIRAM, VARINJAM CHERRY, KALLUVATHUKKAL P.O., KOLLAM DISTRICT.

71 THULASI ALIAS THULASEEDHARAN
AGED 50 YEARS, S/O.RAMAN GOPALAN, SATHEESH MANDIRAM, VARINJAM CHERRY, KALLUVATHUKKAL P.O., KOLLAM DISTRICT.

72 YAMUNA, D/O. RAMAN GOPALAN,
AGED 40 YEARS, SATHEESH MANDIRAM, VARINJAM CHERRY, KALLUVATHUKKAL P.O., KOLLAM DISTRICT.

73 KUMARI, AGED 50 YEARS
D/O. VASUDEVAN, (D2), ARANINNAVILA VEEDU, KOTTAPPURAM, PARAVOOR P.O., KOLLAM DISTRICT.

74 SURESH KUMAR, AGED 45 YEARS
S/O. VASUDEVAN, ARANINNAVILA VEEDU, KOTTAPPURAM,, PARAVOOR P.O., KOLLAM DISTRICT.

75 SUNIL, AGED 40 YEARS
S/O. VASUDEVAN, ARANINNAVILA VEEDU, KOTTAPPURAM,, PARAVOOR P.O., KOLLAM DISTRICT.

76 SILVI, AGED 38 YEARS
D/O. VASUDEVAN, PLAVILA VEEDU, POOTHAKKULAM P.O., PARAVOOR, KOLLAM DISTRICT.

77 LALITHA, AGED 55 YEARS
W/O. SADANANDAN (D3), ECHAVILA VEEDU, CHATHANNOOR P.O., KOLLAM DISTRICT.

78 VIJAYAN, AGED 35 YEARS
S/O. SADANANDAN, ECHAVILA VEEDU, CHATHANNOOR P.O., KOLLAM DISTRICT.

79 LATHA, AGED 32 YEARS, D/O. SADANANDAN
ECHAVILA VEEDU, CHATHANNOOR P.O., KOLLAM DISTRICT.

80 LATHIKA, AGED 30 YEARS, D/O. SADANANDAN
ECHAVILA VEEDU, CHATHANNOOR P.O., KOLLAM DISTRICT.

81 PADMARAJAN AGED 29 YEARS
S/O. KARUNAKARAN (D33), ARANINNAVILA VEEDU,, KOTTAPPURAM, PARAVOOR P.O., KOLLAM DISTRICT.

82 SREEDEVI, AGED 26 YEARS
D/O. KARUNAKARAN, ARANINNAVILA VEEDU,
KOTTAPPURAM,, PARAVOOR P.O., KOLLAM DISTRICT.

83 PADMINI, AGED 23 YEARS
D/O. KARUNAKARAN, ARANINNAVILA VEEDU,
KOTTAPPURAM,, PARAVOOR P.O., KOLLAM DISTRICT.

84 SAROJINI, D/O. ANANDA BHAI (P1)
MANAPPURATHU VEEDU, PERIGAMALA, KALLIYOOR,,
TRIVANDRUM.

85 RAJENDRAN, S/O. ANANDA BHAI
HOUSE NO. 24, AISWARYA NAGAR, KESAVADASAPURAM.,
PATTOM, TRIVANDRUM.

86 DR.REMA CHANDRASENAN,
D/O. ANANDA BHAI, HOUSE NO. 24, AISWARYA NAGAR,,
KESAVADASAPURAM, PATTOM, TRIVANDRUM.

87 SARADA (WIFE OF DECEASED SON OF ANANDA
BHAI), SARADA NIVAS, KOODATHINKU ROAD,,
KULASEKHARAPURAM, KANYAKUMARI DISTRICT, TAMIL
NADU

88 SHYLAJA, "LAKSHMI", KOTTAPPURAM
PARAVOOR P.O., KOLLAM DISTRICT.
(IMPLEADED VIDE IA 2760/2006 DATED 4.8.20)

89 THE SECRETARY, SNVRC BANK
PARAVOOR P.O., KOLLAM DISTRICT.
(IMPLEADED VIDE IA 2760/2006 DATED 4.8.20)

90 CHANDRIKA, D/O. KUNCHUKALI SARADA (P9)
THEKKE PLAVILA VEEDU, KOONAYIL CHERRY, PARAVOOR
P.O., KOLLAM DISTRICT.
(IMPLEADED AS ADDL.P13 AND P14 VIDE IA 2760/2006
DATED 4.8.20)

91 SUKESAN,
S/O. KUNCHUKALI SARADA, THEKKE PLAVILA VEEDU,
KOONAYIL CHERRY, PARAVOOR P.O., KOLLAM DISTRICT.

ADDL.R92. G. SURENDRAN PILLAI,
S/O. GANGADHARAN PILLAI, AGED 53, RESIDING AT NIDHI, KOONAYIL, PARAVOOR POST, KOLLAM DISTRICT.

ADDL.R93 G. JAYAPRASAD,
S/O. GANGADHARAN PILLAI, AGED 48, RESIDING AT SAKTHI VIHAR, KALAKKODE, POOTHAKULAM P.O., PARAVOOR, KOLLAM DISTRICT.

ADDL.R94 G.BHADRAKUMAR,
S/O. GANGADHARAN PILLAI, AGED 46, RESIDING AT SAKTHI VIHAR, KALAKKODE, POOTHAKULAM P.O., PARAVOOR, KOLLAM DISTRICT.

ADDL.R95 S. GEETHAKUMARI,
D/O. GANGADHARAN PILLAI, AGED 43, RESIDING AT ASHOK BHAVANAM, KULAMADA, KIZHAKKENADA P.O., PARIPPALLY, KOLLAM DISTRICT.

(LRS OF DECEASED D59 ARE IMPLEADED AS ADDITIONAL R92 TO R95 AS PER ORDER DATED 17/02/2014 IN IA 174/14)

ADDL.R96 SUDHARMANI,
D/O. SAROJINI, AGED 54 YEARS, RESIDING AT KALLIL VEEDU, NEDUNGOLAM P.O., PARAVOOR, KOLLAM DISTRICT.

ADDL. R97 SATHI,
D/O. SAROJINI, AGED 48 YEARS, RESIDING AT KALLIL VEEDU, NEDUNGOLAM P.O., PARAVOOR, KOLLAM DISTRICT.

ADDL. R98 SHEELA,
D/O. SAROJINI, AGED 43 YEARS, RESIDING AT KALLIL VEEDU, NEDUNGOLAM P.O., PARAVOOR, KOLLAM DISTRICT.

(ADDITIONAL R96 TO R98 ARE IMPLEADED AS LEGAL REPRESENTATIVES OF DECEASED R37 AS PER ORDER DATED 11/06/2015 IN IA 2178/2014)

ADDL. R99 SUSEELA,
D/O. SULOCHANA, AGED 48 YEARS, RESIDING AT

VILAYIL VEEDU, NEDUNGOLAM P.O., PARAVOOR, KOLLAM DISTRICT.

ADDL. R100 SULEKHA, D/O. SULOCHANA, AGED 42 YEARS, RESIDING AT VILAYIL VEEDU, NEDUNGOLAM P.O., PARAVOOR, KOLLAM DISTRICT.

ADDL. R101 SUJA, D/O. SULOCHANA, AGED 38 YEARS, RESIDING AT VILAYIL VEEDU, NEDUNGOLAM P.O., PARAVOOR, KOLLAM DISTRICT.

ADDL. R102 SUMATHI, D/O. SULOCHANA, AGED 33 YEARS, RESIDING AT VILAYIL VEEDU, NEDUNGOLAM P.O., PARAVOOR, KOLLAM DISTRICT.

(ADDITIONAL R99 TO R102 ARE IMPLEADED AS LEGAL REPRESENTATIVES OF DECEASED R39 AS PER ORDER DATED 11/06/2015 IN IA NO.2202/2014)

ADDL. R103 J. RAJENDRAN PILLAI, S/O. JANARDHANAN PILLAI, AGED 56 YEARS, SANGEETHA, FROM RAJESWARI MANDIRAM, POOTHAKKULAM P.O., KOLLAM DISTRICT-691302.

(ADDITIONAL R103 IS IMPEADED AS PER ORDER DATED 05/11/2020 IN IA 2702/2016)

ADDL. R104 K. SADANANDAN, AGED 66 YEARS, S/O. KESAVAN, RESIDING AT OMAL KOTTAPPURAM, PARAVOOR, KOLLAM DISTRICT-691301.

(ADDITIONAL R104 IS IMPLEADED AS PER ORDER DATED 05/11/2020 IN IA NO.876/2018)

ADDL. R105 SOMARAJAN AGED 70 YEARS H/O SARASWATHI, T.C. 28/876, KAITHAMUKKU, PETTAH P.O., THIRUVANANTHAPURAM TALUK.

ADDL. R106 M.S. MINI AGED 48 YEARS

D/O SARASWATHI, T.C. 28/876, KAITHAMUKKU, PETTAH P.O., THIRUVANANTHAPURAM TALUK.

ADDL. R107 M.S. ANI
AGED 46 YEARS
S/O SARASWATHI, T.C. 28/876, KAITHAMUKKU, PETTAH P.O., THIRUVANANTHAPURAM TALUK.

ADDL. R108 M.S. SHYNI
AGED 44 YEARS
D/O SARASWATHI, T.C. 28/876, KAITHAMUKKU, PETTAH P.O., THIRUVANANTHAPURAM TALUK.

THE LEGAL HEIRS OF THE DECEASED R38 ARE IMPLEADED AS ADDITIONAL RESPONDENTS 105 TO 108 VIDE ORDER DATED 02/12/22 IN IA 1/22.

ADDL. R109 RAJAMONY
D/O. RAVEENDRAN, AGED 35, ANEVIKA, NEAR KALLIL VEEDU, NEDUNGOLAM P.O., KOLLAM DISTRICT - 691 334.

ADDL. R110 MINI
W/O. SAJU, ANEVIKA, NEAR KALLIL VEEDU, NEDUNGOLAM P.O., KOLLAM DISTRICT.

(THE LEGAL HEIRS OF THE DECEASED 40TH RESPONDENT ARE IMPLEADED AS ADDITIONAL RESPONDENTS 109 AND 110 VIDE ORDER DATED 27/3/25 IN IA 1/24).

ADDL. R111 NATARAJAN , AGED 76,
S/O.RAJAMMA, CHANDRAVILASAM, VENGOD, PALAYAMKUNNU P.O., TRIVANDRUM - 695 146.

ADDL. R112 SURENDRAN, AGED 64,
S/O. RAJAMMA, NATARAJA BHAVAN, PAMPURAM, KALLUVATHUKKAL P.O., KOLLAM DISTRICT.

ADDL. R113 SURESH, AGED 53
S/O. RAJAMMA, NATARAJA BHAVAN, PAMPURAM, KALLUVATHUKKAL P.O., KOLLAM DISTRICT - 691 578.

THE LEGAL HEIRS OF THE DECEASED 61ST RESPONDENT ARE IMPLEADED AS ADDITIONAL RESPONDENTS 111 TO 113 VIDE ORDER DATED 27/3/25 IN IA 3/24

ADDL. R114 PREM ANAND, AGED 45,
S/O. M.S. ANAND, ATHORIA BHAVAN, KOONAYIL,
PARAVOOR P.O., KOLLAM DISTRICT - 691 301.

ADDL. R115 PREM PRAKASH, AGED 40,
S/O. M.S. ANAND, SANTHI BHAVAN, KOONAYIL,
PARAVOOR P.O., KOLLAM DISTRICT - 691 301.

THE LEGAL HEIRS OF DECEASED 62ND RESPONDENT ARE IMPLEADED AS ADDITIONAL RESPONDENTS 114 AND 115 VIDE ORDER DATED 27/3/25 IN IA 5/24

ADDL. R116 KANTHAMANI, AGED 64,
W/O. MADHAVAN GOPINATHAN, GOKULAM, NJEKKUNILAM,
VALLIKKODE P.O., PATHANAMTHITTA P.O.
PIN - 695 653.

ADDL. R117 VIPIN, AGED 40,
S/O. MADHAVAN GOPINATHAN, GOKULAM, NJEKKUNILAM,
VALLIKKODE P.O., PATHANAMTHITTA P.O.
PIN - 695 653.

ADDL. R118 REKHA GOPINATH, AGED 37,
D/O. MADHAVAN GOPINATHAN, GOKULAM, NJEKKUNILAM,
VALLIKKODE P.O., PATHANAMTHITTA P.O.,
PIN- 695 653.

THE LEGAL HEIRS OF DECEASED 65TH RESPONDENT ARE IMPLEADED AS ADDITIONAL RESPONDENTS 116 TO 118 VIDE ORDER DATED 27/3/25 IN IA 7/24

ADDL. R119 LALITHA, AGED 65
W/O. RAVEENDRAN, SREEJYOTHI, CHIRAKKARA THAZAM,
CHIRAKKARA P.O., KOLLAM DISTRICT - 691 578.

ADDL. R120 YAMUNA, AGED 40
D/O. RAVEENDRAN, SABHALYAM, CHEERA VILA, THAZHAM,
CHATHANOOR P.O., KOLLAM - 691 572.

ADDL. R121 SINDU, AGED 37
D/O. RAVEENDRAN, CHARUVILA VEEDU, KOONYIL, PARAVOOR P.O., KOLLAM - 691 301.

ADDL. R122 RAJU, AGED 35
S/O. SREEJYOTHI, CHERAKKARA, THAZHAM, CHURAKKARA P.O., KOLLAM - 691 578.

THE LEGAL HEIRS OF DECEASED 66TH RESPONDENT ARE IMPLEADED AS ADDITIONAL RESPONDENTS 119 AND 122 VIDE ORDER DATED 27/3/25 IN IA 9/24

ADDL. R123 JAYAKUMAR, AGED 55,
S/O. GOURI OMANA, SANTHI BHAVAN, KOONYIL, PARAVOOR P.O., KOLLAM - 691 301.

ADDL. R124 JAYASANTHI, AGED 52,
D/O. GOURI OMANA, SANTHI BHAVAN, KOONYIL, PARAVOOR P.O., KOLLAM - 691 301

ADDL. R125 BALAMURALI, AGED 49
S/O. GOURI OMANA, SANTHI BHAVAN, KOONYIL, PARAVOOR P.O., KOLLAM - 691 301.

ADDL. R126 SULAJA, AGED 45,
D/O.GOURI OMANA, SANTHI BHAVAN, KOONYIL, PARAVOOR P.O., KOLLAM 691 301.

THE LEGAL HEIRS OF DECEASED 67TH RESPONDENT ARE IMPLEADED AS ADDITIONAL RESPONDENTS 123 AND 126 VIDE ORDER DATED 27/3/25 IN IA 11/24.

BY ADVS.
MINI GANGADHARAN FOR R90 & R91
SRI.ALEXANDER GEORGE FOR R82
SRI.ABRAHAM GEORGE JACOB FOR R46
SRI.S.BIJU KIZHAKKANELA
SRI.M.RAJENDRAN NAIR FOR R103 & 104
SRI.B.SURESH KUMAR FOR R89
SRI.SUNNY ZACHARIA FOR R2, R3, R5, R6, R8, R10
SMT.M.SANTHY
SRI.SUNIL N.SHENOI FOR R99, R100, R101 & R102

SRI.K.V.VINOD FOR R99, R100, R101 & R102

THIS REGULAR FIRST APPEAL HAVING COME UP FOR HEARING/ORDERS ON 14.02.2025, THE COURT ON 27.03.2025 DELIVERED THE FOLLOWING:

JUDGMENT

Defendants 72 to 74 in O.S.No.79/1989 on the files of Principal Sub Court, Kollam have come up in the present appeal. Suit is for partition, injunction and consequential reliefs.

2. The brief facts necessary for the disposal of the appeal, are as follows:

The plaint A schedule property having an extent of 12 cents and B schedule property having an extent of 10 cents originally belonged to Paranthiyil Veylu Mangattu Family. The properties were given to Anandan Raman as ottikuzhikanam for a consideration of 1400 *panam* as per ottikuzhikanam document dated 3.12.1078 M.E. The properties were thus remaining in the possession of Anandan Raman. Anandan Raman died leaving behind his wife Kurumba and nine children, Kesavan, Velu, Neelakandan, Krishnan, Gopalan, Kochuupennu, Kunjamma, Ummini, Kunjukali. The appellants traced their title to the predecessor-in-interest, Karunakaran, who is the son of Kunjukali. The plaintiffs are the legal heirs of Ummini, the 8th child of Anandan Raman and Kurumba. The 9th plaintiff is the daughter of Kunjukali. The 5th and 6th children, Krishnan and

Kunjamma, died issueless. Kunjukali had four children, the 9th plaintiff, the 26th defendant, Kalyani and Karunakaran. Karunakaran is the 33rd defendant in the suit. The appellants are the legal heirs of Karunakaran, the 33rd defendant. For a better appreciation of the flow of title, the genealogy chart of the family is appended in this judgment at page No.45.

3. While so, the members of the joint family of the original jenmi filed O.S No.134/1966 before the Munsiff's Court, Kollam against plaintiffs 1 to 9 and defendants 1 to 36 in this case for redemption of the mortgage. In the said suit, the 1st defendant and the other children and grandchildren of Anandan Raman, who were alive at the time of the institution of the suit, raised a plea that the plaintiffs therein are not entitled to redeem and recover the plaint schedule property thereunder. During the pendency of the suit, the Kerala Land Reforms Act, 1964 was amended by Act 35 of 1969 and by operation of Section 4A of the provisions of the said Act, which came into force on 1.1.1970, the plaintiffs and defendants 1 to 36 obtained fixity of tenure over the plaint A and B schedule properties. Accordingly, O.S No.134/1966 was dismissed by the Munsiff's Court, finding that the landlords are not entitled for redemption of the

property, since the defendants are entitled to fixity of tenure under the provisions of the Kerala Land Reforms Act. Aggrieved by the judgment and decree in O.S.No.134/1966, an appeal was preferred by the jenmi family before the District Court, Kollam as A.S No.46/1972. The appeal was also dismissed affirming the findings of the trial court. Thus, the plaintiffs 1 to 9 and defendants 1 to 36, who are the legal heirs of deceased Anandan Raman, were stated to have become absolute owners of plaint A and B schedule properties and are being continued as such.

4. Going by the plaint averments, the children of Anandan Raman by name Kesavan, Velu, Neelakandan, Kochupennu, Ummini, Kunjukali, Gopalan and Krishnan are entitled to 1/8 share each over the plaint schedule properties. The three shares entitled to Neelakandan, Krishnan and Gopalan and 1/8 share to Kochupennu had been released by their legal heirs and, hence, defendants 2 to 7, who are the children of Kesavan, have got 1/8 share in the plaint A and B schedule properties. It is further contended that the 1st plaintiff and late Vidyadharan jointly got 1/8 share. The 1/8 share entitled to Kunjukali devolved upon Nanu, Sarada (9th plaintiff), Gowri (26th defendant), Kalyani and Karunakaran (33rd defendant). According to

the plaintiffs, defendants 8 to 12, who are children of Velu, had got 1/8 share and they had alienated their 1/8 share in the plaint B schedule property in favour of the 37th defendant in the case. Nanu, S/o. Kunjukali died after his marriage and predeceased his wife. Nanu, Sarada (9th plaintiff), Gowri and defendants 27 to 32, who are the children of Kalyani, and the 33rd defendant had got 1/5 share in the 1/8 share since Nanu died issueless. Thus, each of them have got ¼ share in the 1/8 share. The 1st plaintiff and the legal heirs of late Vidyadharan, who are plaintiffs 2 to 8 and 10 to 12, had got 1/8 share jointly. It is further averred that Sarada, the 9th plaintiff, had got ¼ share in 1/7 share, that is 1/28 share. It is further contended that the 1st plaintiff had got ½ share in the ¼ share and the plaintiffs 2 to 8 and 10 to 12 got ½ share in 1/7 share, that is 1/14 share. Though the plaintiffs had demanded the defendants 1 to 33 to join with them for partition of the plaint schedule property, they did not accept it. According to the plaintiffs, the 33rd defendant had constructed certain shop rooms on the western side of the plaint schedule property without the consent and knowledge of the plaintiffs and others. The defendants 38 to 49 are the tenants in the shop room and the 2nd defendant is using the shop room in the plaint A schedule property

and making preparations for new constructions in it disregarding the residence of other co-owners. Therefore, according to the plaintiffs, defendants 2 and 33 have no right to make any construction in the plaint schedule properties since they are only co-owners of the same along with the plaintiffs and other defendants. Defendants 2 and 33 had filed separate written statements. The 37th defendant supported the plea of the plaintiffs. The 33rd defendant contended that the plaint schedule property does not belong to the plaintiffs. The suit was instituted by the plaintiffs in collusion with the 37th defendant and his brother, Saji, just to harass the defendants. The deceased Anandan Raman had not obtained possession over the plaint B schedule property by virtue of the ottikuzhikanam document. The ottikuzhikanam document is only a *purakkadam*, insofar as the plaint B schedule property is concerned. The plaint B schedule property came into the possession of Anandan Raman only after 1081 M.E. In 1088 M.E Anandan Raman partitioned his property among his children and shifted his residence to Parippally. Thereafter, it was the mother and brothers of the 33rd defendant, who were in possession and enjoyment of the plaint B schedule property by residing in the building in it. While so, the sister(s) of the 33rd

defendant was/were married off by making use of his own funds. The mother of the 33rd defendant died in the year 1943 and the marriages of the younger sisters, including the 9th plaintiff, were conducted in the year 1945. From 1945 onwards, the 33rd defendant is in absolute possession and enjoyment of the plaint B schedule property by residing in it along with his family and making improvements. The brother of the 33rd defendant, Padmanabhan Nanu continued to reside along with him and his family in the building in the plaint B schedule property and by 1960, he shifted his residence to Pulickal veedu. After 1945, none of the sisters of the 33rd defendant have resided in the house along with the 33rd defendant in the plaint B schedule property. Thus, plaint B schedule property remained in the exclusive and absolute possession and enjoyment of the 33rd defendant and his family ever since 1945. The 33rd defendant further raised a plea that in the year 1974, he filed O.A.No.74/1974 before the Ithikkara Land Tribunal, in which Raman Neelakantan, Raman Krishnan, Raman Gopalan, Padmanabhan Nanu, Narayanan Vidyadharan, Vasu, Raveendran, Velu Raghavan, Kunchali Gouri, Kunchali Kallyani and Kunchali Sarada, who are the children and grandchildren of deceased Anandan Raman, were impleaded as

respondents/ intermediaries along with the members of the jenmi family. Subsequently, the said O.A was amended on knowing that the right available to the 33rd defendant under the Kerala Land Reforms Act is as a deemed tenant. Meanwhile, the Ithikkara Land Tribunal was abolished, and the said O.A was transferred to the Kollam Land Tribunal and renumbered as O.A No.500/1975, and by order in the said O.A, the 33rd defendant obtained purchase certificate in respect of the plaint B schedule property having an extent of 18 cents. Therefore, it was specifically contended that once the purchase certificate was issued, the 33rd defendant has absolute right, title, and interest over the property. It was also contended that the right, if any, of the plaintiffs had lost by adverse possession and ouster and, therefore, the suit be dismissed.

5. On behalf of the plaintiffs, Exts.A1 to A43 documents were produced and marked. Exts.B1 to B14 were marked on the side of the defendants. The report of the Advocate Commissioner was marked as Ext.C1. PWs 1 to 3 were examined on behalf of the plaintiffs, whereas DW1 was examined on behalf of the defendants. On the basis of the evidence and pleadings on record, the trial court framed the following issues:-

"1) Whether the suit is bad for non-joinder of necessary parties?

2) Whether the plaint schedule properties are available for partition?

3) Whether the right if any of the plaintiffs and others over plaint A schedule property is lost by ouster and adverse possession of 2nd defendant?

4) Whether plaintiffs are taking any share in the plaint schedule items?

5) Whether 2nd defendant has made substantial improvements in plaint A schedule item No.1 as contained? If so, whether he is entitled to any value of improvements?

6) Whether plaint B schedule property belongs to 33rd defendant alone?

7) Whether the 33rd defendant made valuable improvements in plaint B schedule property, if so whether 33rd defendant is entitled to get value of improvements?

8) Whether the suit is not maintainable?

9) Whether 37th defendant entitled to get partition and separate possession of his share? If so what is his share?

10) Whether injunction prayed for is allowable?

11) Reliefs and costs?"

6. On appreciation of evidence, the trial court came to the conclusion that the 33rd defendant is not entitled to any absolute right over the plaint schedule property, inasmuch as the possession of the 33rd defendant was only as that of the other co-owners. Therefore, the court came to the conclusion that merely by obtaining purchase certificate, the 33rd defendant will not get any absolute right, title and interest over the property. The trial court further held that the possession, if any, of the 33rd defendant is deemed to be as that of other co-owners and, therefore, the 33rd defendant did not have any absolute right over the property and hence, decreed the suit. Aggrieved by the judgment and decree in O.S.No.79/1989, the defendants 72 to 74 have preferred the present appeal.

7. Heard Sri.S.V.Balakrishna Iyer, the learned Senior Counsel, assisted by Smt.Aiswarya Mohan, appearing on behalf of the appellants and Sri.Abraham George Jacob, the learned counsel appearing on behalf of the 46th respondent/37th defendant and Sri.M.Rajendran Nair, the learned counsel appearing for respondents 103 and 104.

8. Before proceeding to consider the rival submissions raised across the bar, this Court finds that except the 37th defendant, none of the legal heirs of the plaintiffs have contested the present appeal. In the backdrop of the above facts, this Court proceeds to analyse the rival submissions raised on behalf of the parties. Sri.S.V.Balakrishna Iyer, the learned Senior Counsel appearing on behalf of the appellants, submitted that as early as in the year 1966, when the suit was instituted by the members of the jenmi family, the 33rd defendant and his parents were in exclusive possession. The Munsiff's Court in O.S No.134/1966 had taken notice of the exclusive claim of the 2nd defendant over the plaint A schedule property and the 33rd defendant over the plaint B schedule property. After filing of O.A No.33/1974 and after disposal of A.S No.46/1972, the 33rd defendant obtained 4/8 share under Exts.A13 and A14 release deeds. The purchase certificate having been issued on 18.6.1976 (Ext.B2), the suit was instituted only on 14.3.1989, i.e. beyond 12 years of the issue of the final order (Ext.A18) and the purchase certificate. In the light of Exts.A13 and A14, even if it is assumed that the plaintiffs are entitled to maintain the suit, they are not entitled for share to the extent as ordered by the trial court. Out of the 8 sharers, four sharers have no

claim because of Exts.A13 and A14. Out of the remaining, the legal heirs of Kesavan do not have any claim or right in the plaint B schedule property. As far as plaintiffs 2 to 8 and 10 to 12 are concerned, they are bound by Ext.A18 order because of their predecessor, Vidyadharan, was a party to the proceedings, and he did not file any appeal against the said order. None of the children of the 33rd defendant had raised any challenge to Ext.A18 since they did not file any appeal against the same. Therefore, the 9th plaintiff is also bound by the order passed by the land tribunal. He further pointed out that plaintiff No.1 having been represented by her brother Vidyadharan, shares of defendants 3 to 7 and 8 to 12 and plaintiff No.1 are also not allottable to them. Thus, the purchase certificate gives absolute right and title over the plaint B schedule property to the appellants. It is further pointed out that in respect of plaint A schedule item, the right of Kesavan had been recognised as early as in the year 1944 in Ext.A4 partition deed of 1119 M.E by stating that the property will be allotted to him without any improvements. Concluding his submissions, the learned Senior Counsel also raised the question of ouster, especially in the light of unimpeachable evidence produced by the appellants before the trial court. According

to the learned Senior Counsel, the findings rendered by the trial court on the plea of ouster are erroneous and therefore, liable to be interfered with by this Court.

9. On the other hand, Sri.Abraham George Jacob, the learned counsel appearing for the 46th respondent, contented that the plaint schedule properties though originally belonged to Paranthiyil Veylu, Mangattu family, the properties were mortgaged to Anandan Raman as ottikuzhikanam. He reiterated the submissions on the basis of the averments in the plaint. It is further contended by the learned counsel that the 33rd defendant cannot claim exclusive right over the property by virtue of the proceedings in O.A Nos.500/1975 and 733/1975. According to him, Exts.B2 and B4 purchase certificates had been obtained by fraud and ignored as invalid and inoperative. Ext.B2, according to the learned counsel, had been obtained on the basis of Ext.A21 application filed by the 33rd defendant and Ext.B4 was issued on the basis of Ext.A23 application. In Ext.A21, the landlord's name is given as Parameswaran Pillai and the basis of the claim is Ext.A3 judgment and the ottikuzhikanam and the other claimants mentioned are Raman, Neelakandan, Krishnan, Gopalan, Ayyappan and Narayanan. The names and addresses of

defendants 1 to 36 had not been mentioned in either Exts.A2 or A3. It is further pointed out that the persons who are entitled to the share on the basis of Exts.A2 and A3 are not made parties in the O.A proceedings and, therefore, the 33rd defendant is not entitled to claim any absolute right. It is lastly submitted that, at any rate, Exts.B2 and B4 will not affect the rights of the plaintiffs and the defendants. In Exts.A4, A13 and A14, the 33rd defendant admitted the *oodukoor* rights of the others in the ottikuzhikanam and therefore, the possession of the 33rd defendant is that of a co-owner and therefore, the rights of other parties cannot be excluded. Insofar as the plea of ouster is concerned, according to the learned counsel, though the plea of ouster is tenable, it ought to have been supported by concrete evidence. The trial court after appreciation of the evidence had found that the plea of ouster cannot be sustained and therefore, had rightly decreed the suit and thus he prayed that the appeal be dismissed by confirming the judgment and decree of the trial court.

10. Shri M.Rajendran Nair, learned Counsel appearing for respondents 103 and 104 contended that they purchased the property in the year 2006 from the predecessors of the appellants and that the rights of co defendant was not decided in OS No.134 of 1966 and

hence the contention of the plaintiffs that they took the properties as co tenant cannot be accepted. In fact, the learned counsel went to the extent of stating that Late Anandan Raman did not get the property by virtue of ottikuzhikanam and therefore question of application of Section 2(39) of the Kerala Land Reforms Act 1964 does not arise. The subsequent purchase being bona fide in nature, they are entitled to equity.

11. I have considered the rival submissions raised across the bar and have perused the records.

12. On the basis of the rival pleadings raised across the bar, it is imperative for this Court to decide, primarily, two issues;

(a) Whether the 33rd defendant had any absolute right or title over plaint B schedule property by virtue of Ext.B2 purchase certificate?

(b) If not, is the plea of the 33rd defendant on ouster sustainable?

13. Before delving into the rival contentions, this Court is reminded of the fact that respondents 103 and 104 being the subsequent purchasers of the property after passing of the decree cannot raise any contention other than one available to the

appellants. Of course, it is open for them to point out that the plaintiffs are not entitled to any relief in the suit. In the above back drop, this Court proceeds to consider the issues presented before it. Decision of this Court on the first issue will determine the fate of this appeal to a greater extent and if the decision is in favour of the appellants, then the plea of ouster is mere academic. However, if the finding in the first issue is negative, still, the appellants could successfully maintain a plea of ouster.

14. The appellants trace the devolution of their title towards 33rd defendant in the suit. To appreciate the contention of the 33rd defendant, it is important that an extensive consideration be bestowed upon Ext.A2, the judgment and decree in O.S No.134/1966. It must be borne in mind that the suit was initially instituted by the members of the jenmi family for redemption of the mortgage. In the aforesaid suit, it was specifically noticed by the Munsiff's Court, Kollam that the defendants are entitled to fixity of tenure. Though the said judgment was questioned before the appellate court in A.S No.46/1972, the appeal was also dismissed. Therefore, it is an indicative factor to prove that late Anandan Raman had obtained possession of the property on the basis of the ottikuzhikanam.

15. Now, coming to the plea of the 33rd defendant that he has absolute right over the property by virtue of the purchase certificate issued by the land tribunal, certain unassailable facts must be discussed by this Court. Ext.A4 is a partition deed between Kurumba, W/o.deceased Anandan Raman, and eight children. As per Ext.A4 partition deed, the mortgage right under Ext.A1 was divided equally among the eight children of Anandan Raman with a specific right to Kesavan, the father of the deceased 2nd defendant. Be that as it may, when Ext.A4 partition deed was executed, Kunjukali was no more and the 33rd defendant did not join the partition deed and that other legal heirs of deceased Kunjukali refused to join as parties to the partition deed. It is pertinent to mention that the partition deed was executed in the year 1119 ME. It is worthwhile to mention that the specific case set up by the 33rd defendant is that he is in possession of the plaint B Schedule property from 1088 M.E. It is indisputable that the mother of Karunakaran died in the year 1943 and in the same year the partition deed Ext.A4 was executed. So long as the legal heirs of deceased Kunjukali did not join in execution of Ext.A4, the plaintiffs cannot successfully maintain the plea that all the defendants in OS No.134/1966 are tenants in common and Ext.A4 is binding on

defendant no.33. The contents of Ext.A4 will go a long way in establishing the fact that the 33rd defendant was in exclusive possession of the property. It is in this context, the findings of the lower appellate court in A.S No.46 of 1972 has to be construed. The 33rd defendant had a specific plea that he has got fixity of tenure based on his possession as per Section 4A of the Kerala Land Reforms Act, 1964. This plea was accepted by the appellate court. The finding has since become final. So, when the 33rd defendant set up a plea of exclusive title over the property, the plaintiffs attempted to get over the plea by raising a contention that going by Ext.A4, all the defendants in O.S No.134/1966 are tenants in common. The said plea found favour with the trial court while decreeing the suit. In view of the indisputable fact that neither late Kunjukali or her legal heirs being parties to the partition deed, the contents of the same cannot bind on them. Even assuming that Ext.A4 is binding on the 33rd defendant owing to its peculiar nature of being a family arrangement, this Court cannot but notice the compelling facts that the plaintiffs 1 to 8 were allotted the 8th schedule whereas Late Kunjukali and her legal heirs were set apart with the 9th item. The description of the B Schedule matches with that of the 9th Schedule of Ext.A4. It is beyond

one's comprehension as to how the plaintiffs could stake their claim to B Schedule property, especially since they were allotted a share under Ext A4. It must be borne in mind that the suit for partition is not based on Ext.A4, but on the assertion that the plaintiffs are tenants in common with that of the defendants. When a further scrutiny of Ext.A4 is made, it becomes evident that Late Kurumba, the predecessor in interest of Ummini under whom the plaintiffs 1 to 8 traced their title, reserved life interest only on items 1 to 8 in Ext.A4. This leads a strong credence to the case set up by the 33rd defendant that he is in exclusive possession of plaint B Schedule property. Still further, the application before the land tribunal is on the basis of the finding of the lower appellate court that he is a deemed mortgagee under Section 4A of the Kerala Land Reforms Act. If that be so, inevitably, the finding of the trial court that all the defendants took the plaint schedule properties as tenants-in-common cannot be sustained. The fact that none of the heirs of Kunjukali was party to the partition deed is a strong indication that the deceased Kunjukali held the properties in exclusion to the others. The staunch silence on the part of the plaintiffs from 1088 M.E (1943) till 1989 is also a strong indication that the 33rd defendant was in exclusive possession of the

plaint B Schedule property and, therefore, the finding to the contrary by the trial court is palpably wrong.

16. As regards the application before the land tribunal is concerned, the specific case set up by the 33rd defendant, Sri Karunakaran, is that the lower appellate court had accepted his plea that he had got a fixity of tenure under Section 4A of the Kerala Land Reforms Act, 1964 and hence the application was maintainable. On perusal of the Ext.A21 application in OA No.500 of 1975 on the files of Ithikkara Land Tribunal, it is evident that the 33rd defendant set up his title based on the findings of the lower appellate court in A.S No. 46 of 1972. Still further, the devolution of title is sought to be traced to his mother, Late Kunjukali, who came into possession of the property from her father Late Anandan Raman by virtue of the ottikuzhikanam in the year 1078 M.E.. When one analyses the finding of the lower appellate court in A.S No.46 of 1972, the irresistible conclusion is that the 33rd defendant is a mortgagee under the ottikuzhikanam and is entitled to fixity of tenure under Section 4A of the Kerala Land Reforms Act, 1964 and thus the application was perfectly maintainable. It must be borne in mind that in the light of the recitals in Ext.A4, the property covered in items 1 to 9 allotted to

the parties is in the nature of ***"oodukoor"***. Exts.A13 and A14 release deeds were executed in favour of the 33rd defendant. It is in this context that this Court finds considerable force in the submissions of the learned Senior Counsel, Shri S.V.Balakrishna Iyer, that the 33rd defendant had impleaded the heads of the 7 branches and his own brother in OA No.500/1975, which led to an order in his favour and the consequent purchase certificate. It is pertinent to mention that the father of the 3rd plaintiff, Sri.Vidhyadaran, was a party to O.A No.500 of 1975 and that the order passed by the tribunal is thus binding on the legal heirs. No case of fraud or collision is urged before this Court. Furthermore, none of the plaintiffs have chosen to appear before this Court and contest the appeal on merits.

17. Although the learned Counsel for the 46th respondent/defendant no.37 vehemently pointed out that a reading of Exts.A13 and A14 will disprove the plea of exclusive possession set up by defendant no.33 and that the contents of Exts.A13 and A14 will go to show that the executants therein had the right of inheritance and hence the claim of exclusive possession is disproved. However, this Court is not in a position to accept the argument. The necessity to execute Exts.A13 and A14 documents itself is beyond one's

comprehension, especially when parties were allotted respective shares in Ext.A4 partition deed. But even if it is assumed that the parties therein wanted to reduce their bargain into writing, they were perfectly entitled to do so. Still further a close reading of Ext.A13 document shows that the exclusive possession of the 33rd defendant and his mother over the plaint B Schedule property is accepted by the vendors therein. The plaintiffs or as a matter of fact the 37th defendant cannot eschew a portion of Exts.A13 and A14 and project only those parts which are in their favour. When Exts.A13 and A14 are read as a whole, the irresistible conclusion is that the 33rd defendant has successfully proved his possession over the plaint B Schedule property in exclusion to others.

18. The learned counsel, Sri Abraham George Jacob, further asserted before this Court that there can be no adverse possession against a co owner. In support of his contention, he relied on the decisions of this Court in **Joy Kuriakose Vs Kuriakose [2015 KHC 20]** and **John.P (dead) Vs P.J.George (dead) [2024 KHC 7176].** This Court has no doubt regarding the proposition canvassed by the learned Counsel for the 37th defendant. But the pertinent question in this case is not regarding adverse possession but

ouster. Have the appellants succeeded in proving the same? The following discussion will ultimately take this Court to the conclusion.

19. The rule regarding what constitutes an ouster of a co-sharer from the joint property is well settled by the decision of Their Lordships of the Judicial Committee of the Privy Council in a case which went from Ceylone. In **Thomas v. Thomas [1855 (2) K&J 79]**, it was held that possession is never considered adverse if it can be referred to as a lawful title. To succeed on the ground of ouster, the person setting up ouster is bound to show that he did set up adverse or independent title during the period, which was beyond the statutory period of 12 years.

20. The uninterrupted sole possession of such property, without more, must be referred to the lawful title possession by the joint holder to use the joint estate, and cannot adversely claim against other interested members. The possession may be either lawful or unlawful, in the absence of evidence, it must be assumed to be the former. While deciding the question of ouster or exclusion from the joint property in true route what is deducible is that there can be no adverse possession by one co-sharer as against others until there is an ouster or exclusion and that the possession of the co-sharers becomes

adverse to another co-sharer from the moment when there is ouster. That is after the assertion of an ouster title by one co-sharer against the other and to the knowledge of the latter.

21. In **Govindammal v. R.Perumal Chettiyar & Others [(2006) 11 SCC 600]**, the Supreme Court held that a co-sharer becomes constructive trustees of the other co-sharers and the right of a person or its predecessor in interest is deemed to have been protected by the trustees. In order to prove ouster and adverse possession against the co-sharer, the following relevant factors have to be taken into consideration:

(i) Exclusive possession and perception of profits for well over the period prescribed by the law of limitation;

(ii) Dealings by the party in possession treating the properties as exclusively belonging to him;

(iii) The means of excluded co-sharer of knowing that his title has been denied by the co-owner in possession.

22. Again, in **Des Raj & Ors vs Bhagat Ram (Dead) By Lrs. & Ors [(2007) 9 SCC 641]**, the Supreme Court considered the issue of adverse possession and ouster in suits relating to partition. It was held that a plea of adverse possession or a plea of ouster would

indisputably be governed by Articles 64 and 65 of the Limitation Act. Mere assertion of the title by itself may not be sufficient unless the parties prove *animus possidendi.*

23. In **B.R.Patil v. Tulsa Y Sawkar & Others [2022 SCC OnLine SC 240]**, the Supreme Court had occasion to consider the plea of ouster in a wider perspective and it was held that the very essence of adverse possession and therefore ouster lies in a party setting up a hostile title in himself. The possession of a co-owner is ordinarily on his behalf and also on behalf of the entire body of the co-owners. In the case of an ouster, the co-owner must indeed have the hostile animus. He must assert a title which is not referable to a lawful title.

24. Based on the principles expounded by the Supreme Court in the aforesaid decisions, it becomes imperative for this Court to deduce the evidence that is adduced in the present case to consider the plea of ouster in a deeper perspective. Apart from the evidence in the present case, the pleadings of the 33rd defendant in the written statement show that 12 shop rooms were constructed by the 33rd defendant after issuance of the purchase certificate and the same were let out. The plaintiffs have no case that at any point of time prior to

the institution of the suit, they had demanded any share of the rent that was derived from the shop rooms. A reading of Ext.A2 judgment shows that the averment of the 33rd defendant herein who was a party to the suit, that he is in exclusive possession of the plaint B schedule property and the house constructed therein is not seen disputed seriously by either Vidyadharan, the predecessor in interest of the plaintiffs or any other person. The house, which was the subject matter of the proceedings in O.S No.134/1966, was demolished and re-constructed in 1977, and thereafter, four shop rooms were built in the year 1978. Either immediately after the judgment was rendered in O.S No.134/1966 or within the statutory period of limitation of 12 years before the date of filing of the suit in the year 1989, it appears that none of the parties had come forward with any claim for share in the plaint schedule properties. It was only when the legal heirs of the 33rd defendant started construction of the building in the year 1988, the suit was filed.

25. One additional fact which would prompt this Court to hold in favour of the appellants on the plea of ouster is Exts.C1 and C1(a) reports. The report of the advocate commissioner shows that the building was constructed earlier and it is pretty old at the time of

his visit. Therefore, there is a clear indication that the building was in existence immediately after the Ext.B2 purchase certificate was obtained.

26. Before concluding finally on the issue of ouster, this Court needs to take note of the contention raised on behalf of the 37th defendant. No doubt, the learned counsel is right in contending that mere nonparticipation in the rent and in profits of the land of a co-sharer does not amount to ouster and give title by adverse possession to the other co-sharers. But, this Court cannot ignore the fact that none of the plaintiffs have come forward to contest the appeal on merits and it is only the 37th defendant is contesting the case. This gives a strong indication that the plaintiffs have instituted the suit solely at the instance of the 37th defendant for the purpose of harassing the appellants.

27. With these impelling facts, when this Court proceeds to test the findings of the trial court, the inescapable conclusion is that the trial court misdirected itself to the entire issues by pining down the appellants to the findings of the trial court in OS No.134/1966. In the considered view of this Court, the findings in OS No.134/1966 having merged into the findings in A.S No.46 of 1972, the trial court went

wrong in holding that since defendants were tenants in common, the application filed by the 33rd defendant was for the benefit of all tenants in common and the purchase certificate issued in his favour will inure to the benefit of all others. The primary concern of this Court was to see whether the appellants have discharged the burden and proved that they were in exclusive possession of the property to the knowledge of others. The contents of Exts.A4, A13 and A14 and other evidence show that the appellants have discharged the burden. Therefore, this Court finds that the plea of ouster insofar as the plaint B schedule property in which the appellants are in possession must be sustained. This is more so when as regards plaint A schedule property, there is no challenge by the aggrieved party against the judgment and decree of the trial court.

As an upshot of these discussions, this Court is of the considered view that the trial court erred egregiously in decreeing the suit insofar as the plaint B schedule property is concerned. Therefore, this Court is left with no other alternative, but to interfere with the judgment and decree of the trial court. Accordingly, the appeal is allowed. The judgment and decree of the trial court, insofar as the plaint B schedule property is concerned, in O.S No.79/1989 is set aside and the suit will

stand dismissed as against the plaint B schedule property. No order as to costs.

Sd/-
EASWARAN S.
JUDGE

jg

BEFORE THE HONOURABLE HIGH COURT OF KERALA

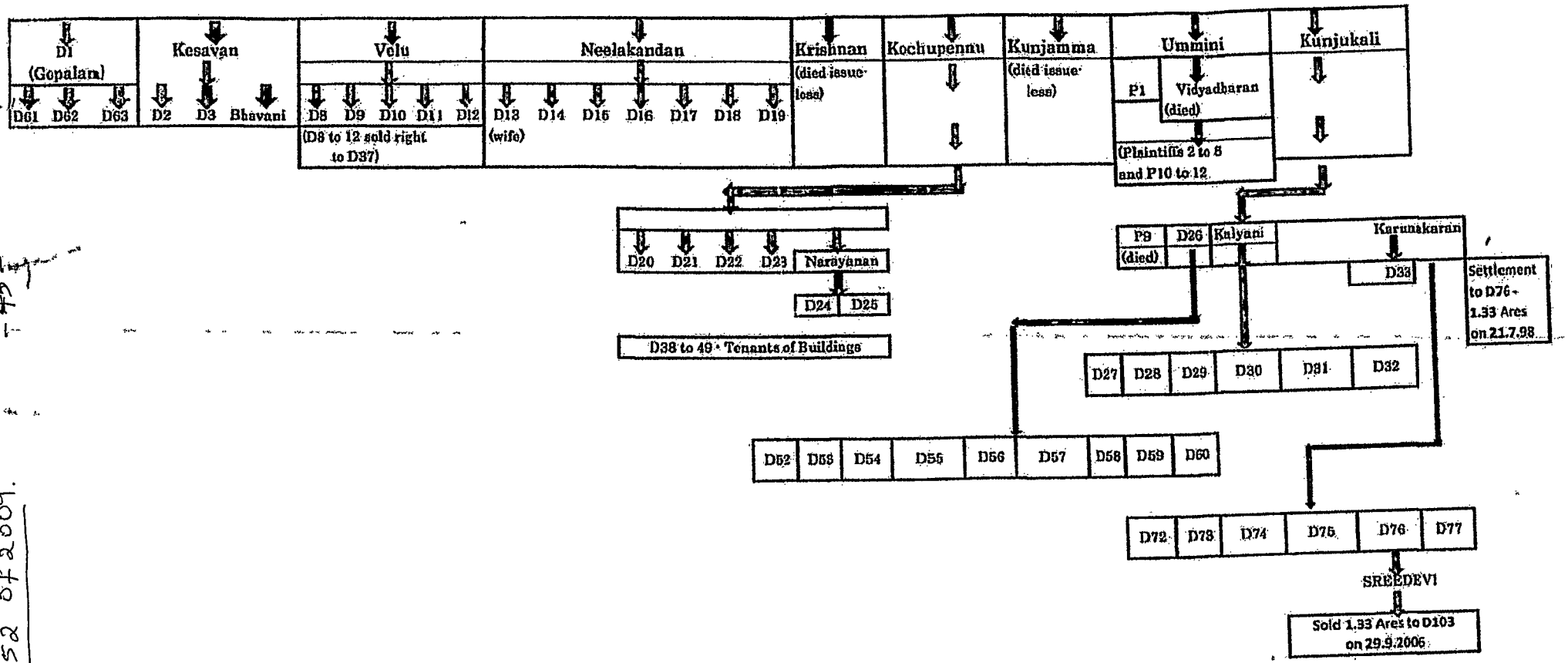
ERNAKULAM

R F A NO. 52/2009

(OS 79/879 OF SUB COURT, KOLLAM)

A. Schedule – 12 Cents in Sy.180/A
B. Schedule – 10 Cents in Sy.1840/B (18 cents as per Purchase Certificate)

Jenmon Right – Paranthiyil Veylu of Mangadu Family
Ottikuzhikanam Right – 03.12.1078 ME – Anantha Raman – Kurumba (Wife)



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RFA No. 52 of 2009.