



2026:KER:35893

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SATHISH NINAN

&

THE HONOURABLE MR. JUSTICE P. KRISHNA KUMAR

MONDAY, THE 25TH DAY OF MAY 2026 / 4TH JYAISHTA, 1948

RFA NO. 149 OF 2016

AGAINST THE JUDGMENT AND DECREE DATED 13.08.2015 IN OS

NO.694 OF 2013 OF SUB COURT, CHAVAKKAD

APPELLANT/2ND DEFENDANT:

P.V.SURENDRAN
AGED 45 YEARS
S/O LATE P.K. VELAYUDHAN 'APPOOS' PUTHAMPULLI
HOUSE, NEAR CHAMUNDESWARI TEMPLE THRISSUR

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

RESPONDENTS/PLAINTIFFS/DEFENDANTS 1 AND 3 TO 7:

- 1 KAVITHA RAJENDRAN (DIED)
W/O LATE REAJENDRAN CHITTETH HOUSE, CHIRAKKAKAM,
VARAPPUZHA POST, ERNAKULAM
- 2 SARATH (MINOR)
AGED 11 YEARS, S/O LATE RAJENDRAN, REPRESENTED BY
POWER OF ATTORNEY HOLDER KAVITHA RAJENDRAN
(MOTHER) AGED 40 YEARS, W/O LATE REAJENDRAN,
CHITTETH HOUSE, CHIRAKKAKAM, VARAPPUZHA POST,
ERNAKULAM



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SUBSTITUTED DESCRIPTION OF R2:
SARATH(MINOR) , 11 YEARS, S/O.LATE RAJENDRAN,
CHITTETH HOUSE, REPRESENTED BY NEXT FRIEND
APPOINTED BY TRIAL COURT JIJIMON, 48 YEARS,
S/O.VASU, CHITTETH HOUSE, CHIRAKKAKAM,
VARAPPUZHA P.O., PARAVUR, ERNAKULAM DISTRICT.
IT IS RECORDED THAT THE FIRST RESPONDENT DIED
AND THE DESCRIPTION OF THE SECOND RESPONDENT IS
SUBSTITUTED AS ABOVE VIDE ORDER DATED
19.06.2025 IN IA 2/2019

- 3 P.V. RAVEENDRAN
S/O LATE P.K. VELAYUDHAN, PUTHAMPULLI HOUSE,
KARUKAMAD, KADAPPURAM THRISSUR
- 4 P.V. JAYENDRAN @ JAYAPRAKASH
PUTHAMPULLI HOUSE, BLANGAD CHAVAKKAD THRISSUR
- 5 SARALADEVI
W/O PULIYEDATH DR. SUBHRAMANIAN, NEAR
KERALAVARMA MENS HOSTAL, KANATUKARA THRISSUR
DISTRICT
- 6 SATHYAVATHI (DIED)
W/O PUTHAMPULLI K. CHANDRADAS, KARUKAMAD,
KADAPPURAM, THRISSUR DISTRICT
- 7 HYUBERT (DELETED)
ROSE VILA MAHIM WEST, MUMBAI-400 016
THE NAME OF THE SEVENTH RESPONDENT IS DELETED
FROM THE PARTY ARRAY AT THE RISK OF THE
APPELLANT VIDE ORDER DATED 03.07.2025 IN
I.A.NO.1 OF 2025
- 8 ARUNODHAYAM TOURIST HOUSE
REPRESENTED BY MANAGING PARTNER P.V.
RAVEEENDRAN S/O LATE P.K. VELAYUDHAN,
PUTHAMPULLI HOUSE, KARUKAMAD, KADAPPURAM
THRISSUR



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- 9 SUBINDAS.K.C,
S/O. LATE SATHYAVATHI, KARIKKAT HOUSE,
'SREECHANDANAM', YASHORAM GARDENS, OLLUR,
THRISSUR, KERALA
- 10 SAJINIDAS.K.C.
AGED 40 YEARS, S/O. LATE SATHYAVATHI, KARIKKAT
HOUSE, 'SREECHANDANAM', YASHORAM GARDENS,
OLLUR, THRISSUR, KERALA
ADDL.R9 AND R10 ARE IMPEADED BEING THE LEGAL
REPRESENTATIVES OF THE DECASED R6 VIDE ORDER
DATED 12.02.2026 IN IA 2/2025

BY ADV SHRI.G.SREEKUMAR (CHELUR)

THIS REGULAR FIRST APPEAL HAVING COME UP FOR HEARING ON
25.05.2026, 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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Dated this the 25th day of May, 2026JUDGMENTSathish Ninan, J.

The preliminary decree in a suit for partition is under challenge by the 2nd defendant. Though various items of property are sought to be partitioned, the present appeal is confined to the plaint 'F' schedule item No.1. Hence, the discussions herein are confined to the same.

2. The plaint 'F' schedule item No.1 is a residential flat at Mumbai. It belonged to one Velayudhan. He died on 21.03.1986. His wife, Ammu, died on 05.01.2002. They had 6 children, namely, Rajendran and defendants 1 to 5. Rejendran died on 03.06.2003. His legal heirs seek for partition.

3. The trial court passed the impugned preliminary decree for partition, declaring that the plaintiffs



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together, and each of the defendants, are entitled for 1/6 shares each.

4. We have heard Shri.B. Krishnan, the learned counsel on behalf of the appellant and Shri. G. Sreekumar Chellur, the learned counsel on behalf of the contesting respondents.

5. The arguments of the learned counsel for the appellant are as under;

(i) Section 16 (b) of the Code of Civil Procedure requires a suit for partition to be filed at the place where the immovable properties are situated. The property in question is at Mumbai. The trial court did not have territorial jurisdiction to entertain the suit.

(ii) Section 120 of the Code of Civil Procedure exempts the application of Section 17 of the Code of Civil Procedure to High Courts having original civil jurisdiction. Rule 12 of the Bombay High Court Rules confers original jurisdiction to immovable properties situated within the local limits of High Court. Therefore, Section 17 of the Code of Civil Procedure could not come to the aid of the Sub Court, Chavakkad (trial court) to entertain the suit.

*(iii) The cause of action in respect of the property at Mumbai, being separate from that of the other items, Section 17 of the Code of Civil Procedure cannot have any application in the light of the judgment of the Apex Court in **Shivnarayan (D) By Lrs. v. Maniklal (D) Thr. Lrs. and others [(2020) 11 SCC 629]**.*



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(iv) By virtue of nomination made by Velayudhan to the Society, the shares of Velayudhan were transferred to the 2nd defendant. Thus, the 2nd defendant is the absolute owner and it is not available for partition.

(v) The suit is not maintainable as barred under Section 100 read with Section 69 of the Kerala Co-operative Societies Act.

(vi) The appellant is a resident of Mumbai whereas the others are not. He had expended amounts and completed the formalities with the Society, for assignment of the apartment. Hence, in equity, the item is to be allotted to him.

6. Apart from the plaint 'F' schedule item No.1, namely, the property in question, almost all the other items sought to be partitioned are situated within the territorial jurisdiction of the trial court. Section 16 stipulates that a suit for partition is to be filed in the Court within whose territorial jurisdiction the property sought to be partitioned is situated. In terms of Section 17 of the Code of Civil Procedure, if immovable property is situated within the jurisdiction of different Courts, suit can be instituted in any of the Courts within whose jurisdiction any portion of the property is situated. In *Shivnarayan (D) By Lrs. v. Maniklal (D) Thr. Lrs. and others [(2020) 11 SCC 629]*, the interplay between Section 16



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and Section 17 of the Code of Civil Procedure were considered and it was held thus;

“28. Sections 16 and 17 of the C.P.C. are part of the one statutory scheme. Section 16 contains general principle that suits are to be instituted where subject-matter is situate whereas Section 17 engrafts an exception to the general rule as occurring in Section 16. From the foregoing discussions, we arrive at following conclusions with regard to ambit and scope of Section 17 of C.P.C.

(i) The word ‘property’ occurring in Section 17 although has been used in ‘singular’ but by virtue of Section 13 of the General Clauses Act it may also be read as ‘plural’, i.e., “properties”.

(ii) The expression any portion of the property can be read as portion of one or more properties situated in jurisdiction of different courts and can be also read as portion of several properties situated in jurisdiction of different courts.

(iii) A suit in respect to immovable property or properties situate in jurisdiction of different courts may be instituted in any court within whose local limits of jurisdiction, any portion of the property or one or more properties may be situated.

(iv) A suit in respect to more than one property situated in jurisdiction of different courts can be instituted in a court within local limits of jurisdiction where one or more properties are situated provided suit is based on same cause of action with respect to the properties situated in jurisdiction of different courts”.



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Therefore, the mere existence of one item out of several items of properties or even a portion of any of the items, within the territorial limits, would be sufficient to confer jurisdiction on the Court. We hold that the trial court had the territorial jurisdiction to entertain the suit.

7. Now, coming to the argument of the learned counsel relying on *Shivnarayan's* case (supra), that was a case where the suit was against different set of defendants with different causes of action regarding properties situated at different places. The cause of action and the defendants with regard to the property situated at one place were different from the property else where. There, the Apex Court observed thus;

“29. The cause of action relating to Indore property and Bombay property were entirely different with different set of defendants. The suit filed by the plaintiff for Indore property as well as Bombay property was based on different causes of action and could not have been clubbed together. The suit as framed with regard to Bombay property was clearly not maintainable in the Indore Courts.”



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It was under such circumstances that the suit was held to be not maintainable. The said judgment does not have any application to the facts of the present case. The property sought to be partitioned in the suit is the legacy of late Velayudhan and his wife Ammu, and the parties to the suit are their legal heirs.

8. The argument of the learned counsel for the appellant relying on Section 120 of the Code of Civil Procedure and the Bombay High Court Rules is misconceived, since as is evident from Section 120, it applies only to the suits before the High Court.

9. At any rate, the contention regarding lack of territorial jurisdiction is not available for the appellant since, it ought to have been raised before the trial court at the earliest possible opportunity. Section 21 (1) of the Code of Civil Procedure prohibits the urging of such contention for the first time before the Appellate Court. So



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also, Section 99 of the Code of Civil Procedure provides that a decree shall not be reversed in appeal on account of any mis-joinder or non-joinder of parties or causes of action or any error, defect or irregularity in the proceedings of suit which does not affect the merits of the case or jurisdiction of the court. As is evident from Section 21 (1) referred to above, the term “jurisdiction” occurring in Section 99 does not include territorial jurisdiction.

10. From the above discussions, we find that the argument regarding lack of territorial jurisdiction has no force.

11. With regard to the argument based on nomination to the Society, such contention is squarely answered by the Apex Court, against the appellant, in *Indrani Wahi v. Registrar of Coop. Societies and others [(2016) 6 SCC 440]*. Therein the Apex Court reiterated that, a nominee is only ‘the hand to receive’ on behalf of



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all the heirs entitled to the assets under the law of succession and that nomination with the Society does not affect the right of the legal heirs. Therefore, the mere fact that Velayudhan had constituted the 2nd defendant as his nominee, and based on the same the 2nd defendant had effectuated transfer in his name, is of no avail. The property enures to the legal heirs and is liable to be partitioned.

12. Yet another contention urged is with regard to the maintainability of the suit in the light of Section 100 and Section 69 of the Co-operative Societies Act. Section 100 bars the jurisdiction of Civil Courts in respect of matters for which provision is made in the Act. Section 69 provides mechanism for settlement of disputes in a Society or between its members or persons claiming through deceased members. What is a “dispute” within the scope of the Act is explained by the definition given in Section 2(i) of the Societies



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Act. As per the definition, to be a “dispute” within the purview of the Co-operative Societies Act, it must be a matter touching the business, constitution, establishments or management of the Society. The learned counsel for the appellant placed reliance on a judgment of the Bombay High Court in *Arun Wamanrao Shinde v. Prakash Bhagwan Dalvi and others* [AIR 1991 Bom. 128] to content that, rival claims between the legal heirs will also fall within the scope of dispute under the Societies Act. In that case, the dispute between a member and his assignee with regard to membership was held to be one touching the business of the Society. It was held that the remedy is before the Co-operative Arbitration Court and a regular civil suit is not maintainable. We are unable to agree with the view. The suit is one for partition of the assets of a deceased member of the Society. The dispute is strictly between the legal heirs with regard to the entitlement; it relates to their inter se title. It has



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nothing to do with the business of the Society. It is not a dispute falling within the definition of “dispute” under the Co-operative Societies Act. Therefore, the said contention has no force.

13. Having negatived all the contentions of the appellant with regard to the maintainability of the suit, we proceed to discuss his claim for equitable allotment of the apartment to him. It is submitted across the Bar that the appellant is a resident of Mumbai, whereas, the others are not. It is the appellant who would be best entitled to and benefited by the allotment of the apartment. He had taken all steps pursuant to the nomination, expended amounts and got the apartment registered in his name. Therefore, it is to be allotted to him, it is argued. Though the submission appeals to us, we leave open the above plea of equity, to be considered by the trial court in the final decree proceedings. We have no reason to assume that the said plea



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will not be considered by the court.

There is no reason to interfere with the decree and judgment of the trial court. The appeal fails and is dismissed. No costs.

Sd/-

**SATHISH NINAN
JUDGE**

Sd/-

**P. KRISHNA KUMAR
JUDGE**

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