



2025:KER:27090

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

TUESDAY, THE 1ST DAY OF APRIL 2025/11TH CHAITHRA, 1947

AS NO.490 OF 1990

AGAINST THE JUDGMENT AND DECREE DATED 15.11.1989 IN O.S
NO.3 OF 1988 OF THE COURT OF THE SUBORDINATE JUDGE OF
TELLICHERRY

APPELLANT/DEFENDANT NO.9:

SREEJITH ALIAS ABHILASH
AGED 15 YEARS
S/O.M.P.LEELA, (MINOR)
BY GUARDIAN MOTHER LEELA IS APPOINTED AS PER
ORDER IN I.A.44/88 DATED 5.7.88,
RESIDING AT DHARMADAM AMSOM, PALAD DESOM.

BY ADVS.
BINDUMOL JOSEPH
B.S.SYAMANTHAK
P.V.SURENDRANATH

RESPONDENTS/PLAINTIFF AND DEFENDANTS 1 TO 8 IN O.S.:

- 1 CHALILPARAMBATH RADHA, (DIED)
AGED 44 YEARS,
W/O.DECEASED RADHAKRISHNAN,
RESIDING AT PALLUR AMSOM DESOM BY HER
MUKTHIYAR HOLDER CHALILPARAMBATH GANESHAN,
S/O.KRISHNAN, AGED 30 YEARS, RESIDING AT
PALLUR AMSOM DESOM.
- 2 KALLI VAYALAMBRON NANI, (DIED)
W/O.EROY PUTHUKKAN KUNHIRAMAN,



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AGED 77 YEARS, NO OCCUPATION,
RESIDING AT KODIYERI AMSOM DESOM.

- 3 KUNNUMMAL SOUMINI, (DIED)
D/O.NANI, AGED 49 YEARS, TEACHER,
RESIDING AT KUNHIPARAMBATH,
KODIYERI AMSOM DESOM.
- 4 KUNNUMMAL RUKMINI, (DIED)
D/O.NANI, AGED 49 YEARS, TEACHER,
RESIDING AT KUNHIPARAMBATH,
KODIYERI AMSOM DESOM.
- 5 KUNNMAL SAROJINI,
D/O.NANI, AGED 47 YEARS, TEACHER,
RESIDING AT PUTHAMPURAYIL,
KOLAVALLUR AMSOM DESOM.
- 6 KUNNUMMAL SATHI, (DIED)
D/O.NANI, AGED 45 YEARS, TEACHER,
RESIDING AT POIL HOUSE, PATTIAM AMSOM,
KONGATTA DESOM.
- 7 KUNNUMMAL RAVINDRAN, (DIED)
D/O.NANI, AGED 43 YEARS, BUSINESS,
RESIDING AT KUNHIPARAMBATH KODIYERI AMSOM
DESOM.
- 8 KUNNUMMAL SUSHEELA, (DIED)
D/O.NANI, AGED 38 YEARS, NO OCCUPATION,
RESIDING AT KUNHIPARAMBATH,
KODIYERI AMSOM DESOM.
- 9 KUNNUMMAL RAMACHANDRAN,
S/O.NANI, AGED 46 YEARS, SCHOOL MASTER,
RESIDING AT KUNHIPARAMBATH,
KODIYERI AMSOM DESOM.

*ADDITIONAL RESPONDENTS 10 TO 12 IMPEADED

- *ADDL.R10 C.P. HARIDASAN, (DIED)
S/O. RADHA, CHALIL PARAMBATH, PALLUR AMSOM
DESOM, THALASSERY TALUK,
KANNUR DISTRICT.



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*ADDL.R11 C.P. SUKUMARAN,
S/O. RADHA, CHALIL PARAMBATH, PALLUR AMSOM
DESOM, THALASSERY TALUK,
KANNUR DISTRICT.

*ADDL.R12 C.P. GANESHAN,
S/O. RADHA, CHALIL PARAMBATH, PALLUR AMSOM
DESOM, THALASSERY TALUK, KANNUR DISTRICT.

*ADDITIONAL R10 TO R12 ARE IMPEADED AS LEGAL
HEIRS OF DECEASED R1 AS PER ORDER DATED
03.09.2024 IN I.A.NO.2391/2016.

**ADDITIONAL RESPONDENTS 13 AND 14 IMPEADED

**ADDL.R13 BHARATHAN, (DIED)
S/O.GOVINDAN C., POIL HOUSE, KADIRUR P.O.,
KANNUR DISTRICT - 670642.

**ADDL.R14 RADHIKA,
D/O. BHARATHAN, POIL HOUSE, KADIRUR P.O.,
KANNUR DISTRICT - 670642.

** LEGAL HEIRS OF DECEASED RESPONDENT
NO.1=6 ARE IMPEADED AS ADDITIONAL
RESPONDENTS NO.13,14 VIDE ORDER DATED
6/9/2024 IN IA NO.2351/2016. IT IS RECORDED
THAT ADDITIONAL RESPONDENTS NO.13 DIED AND
ADDITIONAL RESPONDENT NO.14 IS HIS LEGAL
HEIR VIDE ORDER DATED 6/9/2024 IN MEMO
DATED 31/08/2024.

***ADDITIONAL RESPONDENTS 15 AND 16 IMPEADED

***ADDL.R15 SANAL KUMAR,
S/O.SUSHEELA, KUNHIPARAMBATH HOUSE,
PARAL P.O., KANNUR DISTRICT - 670671.

***ADDL.R16 SUNILA,
D/O.SUSHEELA, KUNJHIPARABATH HOUSE,
PARAL P.O.,
KANNUR DISTRICT - 670671.



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***LEGAL HEIRS OF DECEASED RESPONDENT NO.8
ARE IMPEADED AS ADDITIONAL RESPONDENTS
NOS.15,16 VIDE ORDER DATED 3/9/2024 IN IA
NO.2389/2016.

****ADDITIONAL RESPONDENTS 17 TO 20 IMPEADED

****ADDL.R17 PRAMEELA,
W/O. RAVEENDRAN, SHARMILA BHAVAN,
MANATHANA P.O., KANNUR DISTRICT - 670674.

****ADDL.R18 SHABNA,
D/O. RAVEENDRAN, SHARMILA BHAVAN,
MANATHALA P.O., KANNUR - 670674.

****ADDL.R19 RIJESH,
S/O. RAVEENDRAN, SHARMILA BHAVAN,
MANATHANA P.O., KANNUR - 670674.

****ADDL.R20 SHAMEERA,
D/O. RAVEENDRAN, SHARMILA BHAVAN,
MANATHANA P.O., KANNUR - 670674.

**** IT IS RECORDED THAT RESPONDENT NO.2
DIED AND RESPONDENTS NOS.5, 9, 14 TO 20 ARE
HIS LEGAL HEIRS, VIDE ORDER DATED 3/9/2024
IN MEMO DATED 3/9/2024.

THE RANK OF THE PARTIES SHOWN AS
"RESPONDENTS NOS.5, 9, 14 TO 20" IS
CORRECTED AS "RESPONDENTS NOS.3 TO 9" VIDE
ORDER DATED 26.03.2025 IN I.A.NO.1/2025.

IT IS RECORDED THAT RESPONDENTS NOS.3 AND 4
DIED AND RESPONDENTS NOS.5,9,17 TO 20 ARE
THERE LEGAL REPRESENTATIVES, VIDE ORDER
DATED 6/9/2024 IN MEMO DATED 31/08/2024.
LEGAL HEIRS OF DECEASED RESPONDENT NO.7 ARE
IMPEADED AS ADDITIONAL RESPONDENTS NOS.17
TO 20 VIDE ORDER DATED 03.09.2024 IN
I.A.NO.2403/2016.



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*****ADDITIONAL RESPONDENTS 17 TO 20
IMPLEADED

*****ADDL.R21 C.P SHEELA,
D/O. C K ANANTHAN, PRABHALAYAM P.O,KAKKAD,
KANNUR-670005

*****ADDL.R22 SAI SHYAM HARIDASAN,
PRABHALAYAM PO,KAKKAD, KANNUR- 670005

*****LEGAL HEIRS OF DECEASED ADDITIONAL
RESPONDENT NO.10 ARE IMPLEADED AS ADDITIONAL
RESPONDENTS NOS.21,22 VIDE ORDER DATED
3/9/2024 IN IA NO.2/2024.

BY ADVS.
N.K.SUBRAMANIAN
CIBI THOMAS
V.R.VENKATAKRISHNAN

THIS APPEAL SUITS HAVING COME UP FOR HEARING ON
24.09.2025, ALONG WITH AS.530/1990, THE COURT ON 01.04.2025
DELIVERED THE FOLLOWING:



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IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

TUESDAY, THE 1ST DAY OF APRIL 2025 / 11TH CHAITHRA, 1947

AS NO. 530 OF 1990

AGAINST THE JUDGMENT AND DECREE DATED 15.11.1989 IN OS NO.3
OF 1988 OF SUBORDINATE JUDGE'S COURT, THELLICHERRY

APPELLANTS/DEFENDANTS 1 TO 8:

*1 KALLI VAYALAMBRON NANI, (DIED)
W/O.EROY PUTHUKKAL KUNHIRAMAN,
RESIDING AT KODIYERI AMSOM DESOM.

*IT IS RECORDED THAT APPELLANT NO.1 DIED AND
APPELLANT NOS.2 TO 4 AND ADDITIONAL 9 TO 16
ARE HER LEGAL REPRESENTATIVES, VIDE ORDER
DATED 07.10.2016 IN MEMO DATED 05.10.2016.
(I.A.No.2395/2016)

THE RANK OF THE PARTIES SHOWN AS "APPELLANT
NOS.2 TO 4 AND ADDITIONAL 9 TO 16" IS
CORRECTED AS "APPELLANT NOS.2 TO 8", VIDE
ORDER DATED 25.03.2025 IN I.A.No.1/2025.

2 KUNNUMMAL SOUMINI, (DIED)
RESIDING AT KUNHIPARAMBATH AMSOM DESOM.

3 KUNNUMMEL RUKMINI, (DIED)
D/O.NANI,
RESIDING AT KUNHIPARAMBATH AMSOM DESOM.

4 KUNNUMMEL SAROJINI,
D/O.NANI, RESIDING AT PUTHENPURAYIL,
KOLAVALLUR AMSOM DESOM.

5 KUNNUMMEL SATHI, (DIED)
D/O.NANI, RESIDING AT POIL HOUSE, PATTIAM
AMSOM, KONGATTA DESOM.



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6 KUNNUMMEL RAVINDRAN, (DIED)
S/O.NANI, RESIDING AT KUNHIPARAMBATH,
KODIYERI AMSOM DESOM.

7 KUNNUMMEL SUSHEELA, (DIED)
D/O.NANI, RESIDING AT KUNHIPARAMBATH,
KODIYERI AMSOM DESOM.

8 KUNNUMMEL RAMACHANDRAN,
S/O.NANI, SCHOOL MASTER,
RESIDING AT KUNHIPARAMBATH,
KODIYERI AMSOM DESOM.

**ADDITIONAL APPELLANTS 9 AND 10 IMPEADED

**ADDL.A9 BHARATHAN, POYIL (H) PATTIAM AMSOM,
KONGATTA DESOM, KANNUR DISTRICT. (DIED)

**ADDL.A10 RADHIKA
D/O.BHARATHAN, POYIL (H) PATTAM AMSOM,
KONGATTA DESOM, KANNUR DISTRICT.

* LEGAL HEIRS OF DECEASED APPELLANT NO.5 ARE
IMPEADED AS ADDITIONAL APPELLANTS NOS.9, 10
VIDE ORDER DATED 30/08/2024 IN IA
NO.2396/2016. IT IS RECORDED THAT APPELLANT
NO.9 DIED AND APPELLANT NO.10 IS HIS LEGAL
REPRESENTATIVES, VIDE ORDER DATED 20.8.2024 IN
MEMO DATED 28/8/2024.

***ADDITIONAL APPELLANTS 11 AND 12 IMPEADED

***ADDL.A11 SANALKUMAR
S/O.SUSHEELA, KUNHI PARAMBATH,
KODIYERI AMSOM DESOM, KANNUR DISTRICT.

***ADDL.A12 SUNILA,
D/O.SUSHEELA, KUNHIPARAMBATH,
KODIYERI AMSOM DESOM, KANNUR DISTRICT.

**LEGAL HEIRS OF DECEASED APPELLANT NO.7 ARE
IMPEADED AS ADDITIONAL APPELLANTS NOS.11,12
VIDE ORDER DATED 30/08/2024 IN IA
NO.2902/2016.



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******ADDITIONAL APPELLANTS 13 TO 16 IMPLEADED**

******ADDL.A13 PRAMEELA, W/O.LATE RAVINDRAN, SHERMILA BHAVAN,
MANATHANA P.O., PERAVOOR VIA,KANNUR DISTRICT.**

******ADDL.A14 SHABINA,
D/O. LATE RAVINDRAN, SHERMILA BHAVAN,
MANATHANA P.O., PERAVOOR VIA, KANNUR DISTRICT.**

******ADDL.A15 RIJESH
S/O. LATE RAVINDRAN, SHERMILA BHAVAN,
MANATHANA P.O., PERAVOOR VIA KANNUR DISTRICT.**

******ADDL.A16 SHAMEERA
D/O. LATE RAVINDRAN, SHERMILA BHAVAN,
MANATHANA P.O., PERAVOOR VIA KANNUR DISTRICT.**

******LEGAL HEIRS OF DECEASED APPELLANT NO.6 ARE
IMPLEADED AS ADDITIONAL APPELLANTS NOS.13 TO
16 VIDE ORDER DATED 30/08/2024 IN IA
NO.2394/2016. IT IS RECORDED THAT APPELLANTS
NOS 2,3 DIED AND APPELLANTS NOS.4,8,13,14,
15,16 ARE THEIR LEGAL REPRESENTATIVES, VIDE
ORDER DATED 20/8/2024 IN MEMO DATED 19/8/2024.**

BY ADV CIBI THOMAS

RESPONDENTS/PLAINTIFF/9TH DEFENDANT:

- 1 CHALIL PARAMBATH RADHA, (DIED)
D/O. DECEASED RADHAKRISHNAN,
RESIDING AT PALLUR AMSOM DESOM
BY HER MUKTHIYAR HOLDER, CHALIL PARAMBATH
GANESAN, S/O.KRISHNAN, AGED 30 YEARS,
RESIDING AT PALLUR AMSOM DESOM.**

- 2 SREEJITH ALIAS ABHILASH,
AGED 13 YEARS
S/O.M P LEELA (MINOR) BY GUARDIAN MOTHER
LEELA.**



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*****ADDITIONAL R3 TO 4 IMPEADED

*****ADDL.R3 C.P.SUKUMARAN
S/O.KRISHNAN, CHALIL PARAMBATH (H) ,
PALLUR AMSOM DESOM MAHE COMMUNE.

*****ADDL.R4 C.P.GANESAN
S/O.KRISHNAN, CHALIL PARAMBATH (H) ,
PALLUR AMSOM DESOM MAHE COMMUNE.

*****LEGAL HEIRS OF DECEASED RESPONDENT NO.1
ARE IMPEADED AS ADDITIONAL RESPONDENTS
NOS.3,4, VIDE ORDER DATED 30/8/2024 IN IA
NO.2392/2016

*****ADDITIONAL R5 AND 6 IMPEADED

*****ADDL.R5 C.P.SHEELA,
W/O.LATE HARIDASAN, PRABHALAYAM , KAKKAD
P.O. , KANNUR DISTRICT- 670005

*****ADDL.R6 SAI SHYAM HARIDASAN,
S/O. LATE HARIDASAN, PRABHALAYAM, KAKKAD P.O.,
KANNUR DISTRICT.

*****LEGAL HEIRS DECEASED RESPONDENT NO.3 IN
IA NO.2392/2016 ARE IMPEADED AS ADDITIONAL
RESPONDENTS NOS.5,6, VIDE ORDER DATED
30/8/2024 IN IA NO.2/2024

BY ADVS.
N.K.SUBRAMANIAN
SRI.S.ANANTHAKRISHNAN

THIS APPEAL SUITS HAVING COME UP FOR HEARING ON 24.09.2024,
ALONG WITH AS.490/1990, THE COURT ON 01.04.2025 DELIVERED
THE FOLLOWING:



COMMON JUDGMENT

A suit for partition of the year 1988 is the subject matter of these appeals. The suit O.S.No.3/1988 was decreed, but declined share to the 9th defendant, an alleged illegitimate son of late Radhakrishnan. Radhakrishnan's wife Radha is the plaintiff. Late Radhakrishnan's mother and siblings are defendants 1 to 8. Challenging the judgment and decree in O.S.No.3/1988, two appeals were carried, of which, A.S. No.490/1990 was filed by the 9th defendant; and A.S. No.530/1990, by defendants 1 to 8. The plaintiff is the respondent in both the appeals. A learned Single Judge of this Court, by judgment dated 22.07.1998, allowed both appeals and set aside the judgment in O.S.No.3/1988, recognising a share to the 9th defendant, the illegitimate son. An appeal preferred before the Division Bench, vide A.F.A No.51/1999, was allowed on a technical ground. The Division Bench found that defendant nos.5 and 7 - one Sathi and Suseela - were no more at the time when the two appeals (A.S.Nos.490/1990 and 530/1990) were decided, and thus, the



common judgment was one passed with the dead persons in the party array. On such premise, the judgment was held to be void, since the appeals were ill-constituted. The appeals were accordingly remitted for reconsideration by the Single Bench, after impleading the legal heirs of deceased defendants 5 and 7. It is accordingly that these appeals have now come up for consideration.

2. This Court will first deal with the death of the parties and the impleadment of their legal heirs.

A.S.No.490/1990

The 1st respondent, Radha passed away pending the appeal and her legal representatives were impleaded as additional respondents 10 to 12, as per Order in I.A.No.2391/2016 dated 03.09.2024. The 2nd respondent, Nani also died and respondents 3 to 9 were impleaded as legal representatives of deceased R2. The 3rd respondent, Soumini also passed away and as per the memo filed, respondents 5, 9 and 17 to 20 were recorded as legal heirs of deceased R3. The 4th respondent, Rugmini also passed away and respondents 5, 9



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and 17 to 20 are her legal heirs, recorded as per memo filed. The 6th respondent, Sathi passed away and as per Order in I.A.No.2351/2016, additional respondents 13 and 14 were recorded as the legal heirs of deceased R6. The 7th respondent Raveendran died and as per Order in I.A.No.2403/2016, his legal heirs were impleaded as additional respondents 17 to 20. Respondent no.8, Suseela died and as per Order in I.A.No.2389/2016, her legal heirs were impleaded as additional respondents 15 and 16. The 10th respondent, Haridasan passed away and as per Order in I.A.No.2/2024, his legal heirs were impleaded as additional respondents 21 and 22. The 13th respondent, Bharathan also died and a memo was filed to record the 14th respondent as his legal heir.

A.S.No.530/1990

There were originally 8 appellants. Additional appellants 9 to 16 were subsequently impleaded. Appellants 1, 2, 3, 5, 6, 7 and additional appellant no.9 are no more now. Additional appellants 9 and 10 are the legal heirs of deceased 5th appellant, Sathi, who were impleaded as per



Order in I.A.No.2396/2016. Additional appellants 11 and 12 are the legal heirs of deceased 7th appellant, Suseela, who were impleaded as per Order in I.A.No.2902/2016. Additional appellant nos.13 to 16 are the legal heirs of 6th appellant, Raveendran, who were impleaded as per Order in I.A.No.2394/2016. Appellants 2 to 8 are the legal heirs of deceased 1st appellant, Nani as recorded vide memo dated 05.10.2016, duly corrected as per Orders in I.A.No.1/2025. Appellants 2 and 3 died unmarried and issueless. They bequeathed their rights over the property in favour of appellants 4, 6 and 8 by virtue of a Will. On the death of 6th appellant, his rights devolved upon additional appellants 13 to 16. 10th Appellant being the only daughter of deceased 9th appellant is recorded as his legal representative, as per memo dated 28.08.2024.

3. Coming to the respondents in A.S.No.530/2019, there were two respondents originally. Supplemental respondents 3 to 7 were impleaded subsequently. The 1st respondent



(plaintiff) passed away and she is survived by supplemental respondents 3 and 4 and one Haridasan. The said Haridasan also passed away, who is survived by supplemental respondents 5 and 6. (see the Orders in I.A.Nos.2392/2016 and 2/2024).

4. This Court will now address the appeals on merits. As already indicated, A.S.No.490/1990 is filed by the 9th defendant in the suit, while A.S.No.530/1990 was filed by defendants 1 to 8. For the sake of convenience, the parties are referred to in their original status before the trial court. The plaintiff Radha is the widow of deceased Radhakrishnan. 1st defendant is the mother of Radhakrishnan and defendants 2 to 8 are his sisters and brothers. The 9th defendant, Sreejith alias Abhilash - a minor represented through his mother Leela, at the time of institution of the suit - was impleaded in the suit on the strength of Ext.A10 reply notice, which stated that late Radhakrishnan had a relationship with Leela and 9th defendant is the son born in that relationship. The plaintiff denied such relationship



between her husband Radhakrishnan and the said Leela. The suit for partition was styled, with plaint schedule items 1 and 2 as the property acquired by KunhIRaman, father of late Radhakrishnan; and plaint A schedule items 3 and 4 as the self-acquired properties of late Radhakrishnan. As regards items 1 and 2, the plaint claim is that, upon the death of KunhIRaman, the same devolved upon defendants 1 to 8 and Radhakrishnan; and upon the death of Radhakrishnan, his share over plaint schedule items 1 and 2 devolved upon his wife and mother namely, the plaintiff and 1st defendant, respectively. As regards the self-acquired property of deceased Radharishnan (plaint items 3 and 4 of A schedule), the rights devolved upon the plaintiff and the 1st defendant, being the wife and mother, respectively. B schedule property is the business concern and movables therein, which belonged to Radhakrishnan, in respect of which items also, partition was sought for. Ext.A9 lawyer's notice was issued seeking partition, which was replied by Ext.A10 notice issued by the 1st defendant/mother, stating the relationship between deceased Radhakrishnan and



Smt.Leela and also stating the claim of the 9th defendant, the son born in that relationship. Accordingly, the suit was instituted.

5. The suit was resisted by defendant nos.1 to 8, who filed a joint written statement admitting the plaintiff's status as the widow of late Radhakrishnan, but contending that Radhakrishnan had subsequently married Smt.M.P.Leela and that 9th defendant is the child born in that relationship. They also contended that the plaintiff was fully aware of the second marriage and the son born therein. It is the contention of defendants 1 to 8 that the second marriage with Leela, during the subsistence of the first marriage is invalid in law, which disentitles Leela from inheriting any share in the properties left by Radhakrishnan. However, 9th defendant, in terms of the provisions of the Hindu Marriage Act, will be entitled to due share, is the contention urged. Accordingly, defendants 1 to 8 contended that the assets left by Radhakrishnan is liable to be partitioned among plaintiff, 1st defendant and



also the 9th defendant. Other contentions being not germane for consideration having regard to the scope of these appeals, are not referred to herein.

6. The 9th defendant filed a written statement denying the plaintiff's status as the widow of late Radhakrishnan and propounding the said Radhakrishnan's marriage with Smt.Leela. A specific pleading was incorporated to the effect that Radhakrishnan married the mother of 9th defendant on 24.03.1974, at the residence of his mother, in accordance with the rites and ceremonies of their community. They were living as husband and wife in the house of Radhakrishnan thereafter. In that wedlock, the 9th defendant was born on 30.12.1974. It was contended that all matters of the 9th defendant were taken care of by the said Radhakrishnan, until his death. When the 9th defendant was aged only 4 months, Radhakrishnan constructed a new house at a place called Thundiylil and lived there along with the 9th defendant's mother. Allegations to the contrary were denied in the written statement. Accordingly, the



plaintiff's claim for partition, excluding the 9th defendant, was seriously resisted by the 9th defendant.

7. The evidence in this case consists of Exts.A1 to A10, supported by the oral evidence of PW1, on behalf of the plaintiff. On the defense side, Exts.B1 and B2 were marked and DW1 to DW3 were examined.

8. On an analysis of the facts, evidence and probabilities of the case, the learned Sub Judge decreed the suit, holding that marriage between late Radhakrishnan and Smt.Leela (mother of 9th defendant) could not be established by the defendants and that the witnesses, Dws 1 to 3, examined for the said purpose were unreliable. The said judgment is under challenge herein.

9. Sri.Cibi Thomas, learned counsel for the appellants in A.S.No.530/1990 and Smt.Bindumol Joseph, learned counsel for the appellant in A.S.No.490/1990, both impeaching the impugned judgment, would address the following arguments:



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Learned counsel would point out that there is a clear pleading in paragraph no.6 of the written statement that Radhakrishnan married Leela on 24.03.1974 as per the custom prevailing in the community and that they have been residing as man and wife after the marriage at the house of Radhakrishnan. Referring to the evidence of the plaintiff (PW1), learned counsel would point out that the plaintiff was aware of Ext.B1, as admitted by her. She also admits that she had undergone a surgery at Kozhikode and that Radhakrishnan had sent a lawyer notice seeking dissolution of marriage. To a question as to whether PW1 had resided with Radhakrishnan after the surgery, her answer is that, she had sent letters to him. PW1 has no knowledge as to who did funeral ceremony of Radhakrishnan; and she has no knowledge as to whether Radhakrishnan and Leela has been residing as man and wife at Thundiyil. In short, PW1 pretended ignorance on all vital questions about Radhakrishnan's relationship with Leela and also about the child born in that wedlock, the 9th defendant. Learned counsel then submitted that DW1 Leela specifically spoke



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about the marriage and the ceremonies. DW1 would categorically depose that all the members of Radhakrishnan's family participated in the marriage. As regards Ext.B1, DW1 would depose that it was promised at the time of its execution that the rights of DW1 and the 9th defendant over the property of Radhakrishnan will not be lost by execution of Ext.P1. Learned counsel would invite the attention of this Court to the deposition of DWs 2 and 3 to corroborate the version of DW1. As regards Ext.B1, it is the contention of the learned counsel that the same was drafted by a document writer, wherefore, the recital describing the relation between the DW1 and Radhakrishnan as only a relationship and not a marriage in consensual. Learned counsel invited the attention of this Court to Ext.B2 Birth Certificate to contend that the name of the 9th defendant is shown as Radhakrishnan. Marriage coupled with long cohabitation would only lead to the conclusion that the 9th defendant is the son of Radhakrishnan and Leela, though their marriage was void on account of want of separation of the previous marriage. Learned counsel would



seek the appeals to be allowed. In support of his arguments, learned counsel relied upon the following judgments:

- i) *Kalliani Amma v. K.Devi* [1996 (2) KLT 42 (SC)]
- ii) *Narayani v. Aravindakshan* [2005 (4) KLT 1]
- iii) *Thachambath Padmini Amma v. Kizhakke Thachambath Karthiyani Amma and Others* [2019 (5) KHC 225]
- iv) *Chondon Puthiyoth Shyamalavalli Amma and Others v. Kavalam Jisha and Another* [2007 (2) KHC 976]
- v) *Jayachandran and Others v. Valsala and Others* [2016 (2) KLT 81]
- vi) *S.P.S. Balasubramanyam v. Suruttayan alias Andali Padayachi and Others* [AIR 1992 SC 756]
- vii) *Madan Mohan Singh and Others v. Ranjni Kant and Others* [AIR 2010 SC 2933]
- viii) *Uday Gupta v. Aysha and Another* [(2014) 16 SCC 300]

10. Refuting the above submissions, Sri.N.K.Subramanian would advance the following arguments to sustain the judgment and decree. Propounding Ext.B1, it was contended that the expression used therein is a 'relationship' only; and not a 'marriage', while describing the nature of relationship between Leela and Radhakrishnan. If there was a formal marriage solemnised, there was no difficulty for DW1 to state that the 9th defendant is the son born in the 'marriage' between herself and Radhakrishnan. Learned counsel then submitted that DW2 and DW3 are hired and



tutored witnesses to support DW1. DW2 does not remember the date of marriage of his own children. Besides, DW2 is a relative of DW1, wherefore, his testimony is liable to be discarded, as interested. As regards DW3, it was argued that he and DW1 (brother of Leela), both, were working in Dinesh Beedi. His evidence is also not believable, since he could not recollect the dates of other marriages, which occurred during the relevant time. The third aspect highlighted is with respect to the name of the *Karanavar* from the side of the bride (DW1). DW2 and DW3 would give the names of two different persons as *Karanavar*. Learned counsel would submit that since no marriage has taken place and in as much as the 9th defendant failed to prove the solemnisation of marriage, he cannot lay any claim under Section 16 of the Hindu Marriage Act. In the absence of proof with respect of the marriage, long cohabitation is of no moment, is the submission made by the learned counsel. Learned counsel would submit that the burden as regards solemnisation of a ceremonious marriage is upon the party, who propound such a marriage, which burden has not been



discharged by the appellants. On such premise, learned counsel for the respondents would seek dismissal of the appeals. To buttress his arguments, learned counsel relied upon the following judgments:

- i) *Syamalavalli Amma v. Kavalam Jisha* [2007 (3) KLT 270]
- ii) *Bhargaviammal v. Paramu Achary* [2023 (3) KLT 52]
- iii) *Karthi Pankajakshy v. Lalitha Sujatha* [1990 (1) KLT 248]
- iv) *Jayachandran v. Valsala* [2016 (2) KLT 81]
- (v) *Prabhavini Devi v. Sudha* [2017 (2) KLT SN 8 (C.No.11)]
- (vi) *Indra Sarma v. Sarma* [2013 (4) KLT 763 (SC)]

11. Having heard the learned counsel appearing for the respective parties, this Court primarily takes note of the fact that the solitary issue, which is agitated before this Court by the parties, is with respect to the entitlement of the 9th defendant for a share in the property. No argument was raised on any other aspect.

12. Coming to the crucial question, the right of 9th defendant is traceable to Section 16 of the Hindu Marriage Act, 1955, which is extracted here below:

“16. Legitimacy of children of void and voidable marriages.-(1) Notwithstanding that a marriage is null and void under section 11, any child of such



marriage who would have been legitimate if the marriage had been valid, shall be legitimate, whether such child is born before or after the commencement of the Marriage Laws (Amendment) Act, 1976, and whether or not a decree of nullity is granted in respect of that marriage under this Act and whether or not the marriage is held to be void otherwise than on a petition under this Act.”

13. Interpreting the requirements of Section 16(1), it has been held by a learned Single Judge in ***Shyamalavalli Amma v. Kavalam Jisha*** [2007 (3) KLT 270] that an illegitimate child is entitled to inherit the estate of his father, only if the marriage of the parents was null and void as provided in Section 11 of the Hindu Marriage Act. In another words, the marriage should have been solemnised to avail the benefit of Section 16. This view was upheld by a Division Bench of this Court in ***Jayachandran and others v. Valsala and others*** [2016 (2) KLT 81] holding that in order to attract Section 16 of the Act, a ceremony of marriage, whether void or voidable, will have to be pleaded and proved.



14. Therefore, the crucial question is whether the defendants could establish, by satisfactory evidence, that the marriage between late Radhakrishnan and Smt. Leela (mother of 9th defendant) has been proved. The first aspect to be noted in this regard is that the factum of marriage is specifically pleaded with reference to the date and ceremonies in connection thereof, in the written statement filed by the 9th defendant. The relevant pleadings are extracted here below:

“6. മരിച്ച രാധാകൃഷ്ണൻ എന്നവർ 1974 മാർച്ച് മാസം 24.03.1974 ഈ പ്രതിയുടെ അമ്മയായ മൊരക്കൽ പലേരി ലീലയെ അവരുടെ വീട്ടിൽ വെച്ചു സമുദായാചാരപ്രകാരം പുടമുറിച്ചുടങ്ങുന്നുസരിച്ച് കല്യാണം കഴിക്കുകയും അതിനുശേഷം രാധാകൃഷ്ണൻ എന്നവരുടെ വീട്ടിൽ ഭാര്യാഭർത്താക്കന്മാരായി താമസിച്ചുവന്നതാകുന്നു. ആ ബന്ധത്തിൽ 1974 ഡിസംബർ മാസം 30 - ആം തീയതി ജനിച്ച കുട്ടിയാണ് ഈ പ്രതി. രാധാകൃഷ്ണൻ മരിക്കുന്നതുവരെ ഈ പ്രതിയുടെ എല്ലാ കാര്യങ്ങളും നോക്കിനടത്തിയതു ചിലവുചെയ്തതു രാധാകൃഷ്ണൻ തന്നെയാണു. ഈ പ്രതിക്കുനാല് മാസം പ്രായമായപ്പോൾ രാധാകൃഷ്ണൻ തുണ്ടിയിൽ എന്ന സ്ഥലത്തു പുതുതായി വീടടുത്തു ഈ പ്രതിയുടെ അമ്മയായ ലീലയോടൊപ്പം താമസിച്ചു വന്നതാണു.....”

15. This Court will now look at the evidence adduced in



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support of the above pleading. Smt.Leela, with whom the second marriage is claimed to have been solemnised, mounted the box and adduced evidence as DW1. The relevant portion of the evidence is extracted here below:

"ഞാൻ ഒൻപതാം പ്രതിയുടെ മാതാവാണ്. രാധാകൃഷ്ണൻ എന്റെ ഭർത്താവാണ്. കല്യാണം 24-3-74 ൽ ആയിരുന്നു. എന്റെ വീട്ടിൽ വെച്ചായിരുന്നു കല്യാണം. വീടിന്റെ പടിഞ്ഞാറ്റകത്ത് വെച്ചായിരുന്നു കല്യാണം. നിറനാഴി, പഴം, ചന്ദനത്തിരി, പൂവ്, വീളക്ക് ഇവ ഉണ്ടായിരുന്നു. പുടവയും വെച്ചിരുന്നു. ഞാനും ഭർത്താവും അവിടെയിരുന്നു. അതിനുശേഷം ഞാൻ പൂമാല ഭർത്താവിനിട്ടു. ഭർത്താവ് എന്റെ കഴുത്തിൽ താലികെട്ടി. ഞാൻ വീണ്ടും ഭർത്താവിനു മാലയിട്ടു. ഭർത്താവ് പിന്നെ എനിക്ക് പുടവ തന്നു. ഞങ്ങൾ തീയരാണ്. മരുമക്കത്തായികളാണ്. കല്യാണദിവസം ഭർത്താവിന്റെ വീട്ടിലേക്ക് കൂട്ടികൊണ്ടുപോയി. അവിടെ ഭാര്യഭർത്താക്കന്മാരായി താമസിച്ചു. ഒരു കുട്ടിയായ ശേഷം ഭർത്താവിന്റെ ജോലിസ്ഥലത്തും താമസിച്ചു. ഭർത്താവ് മരിക്കുന്നത് വരെ ഞങ്ങളുടെ സംരക്ഷണം ഭർത്താവ് ചെയ്തു. തുണ്ടിയിൽ വെച്ച് ഭർത്താവ് മരിച്ചു. ഭർത്താവിന്റെ പാറാലിലുള്ള വീട്ടിലാണ് ശവസംസ്കാര ചടങ്ങുകൾ നടത്തിയത്. കർമ്മങ്ങൾ ചെയ്തത് ഒമ്പതാം പ്രതിയാണ്."

16. This evidence of Smt.Leela/PW1 is adequately corroborated by DWs 1 and 2, who are two persons who attended the said marriage. DW2, one Balan, who is a distant relative of Leela, would state in chief-examination that DW1/Leela married late Radhakrishnan on 24.03.1974 at Leela's residence. He deposed that the marriage took place



at the room at the western side, besides speaking about the rituals and ceremonies of the marriage. He spoke about Radhakrishnan giving '*pudava*' (cloth) to Leela and also about Radhakrishnan wearing a garland on Leela, and vice versa. He further spoke about Radhakrishnan tying the *thali* to Leela. The ceremonies were followed by a lunch. DW2 deposed that after the marriage, Leela resided at Radhakrishnan's house and he had seen them living as husband and wife. In cross-examination, DW2 could clearly speak about the rooms and the kitchen of Leela's house, where the marriage took place. He was disbelieved by the trial court for having specifically referred the date of marriage, whereas he could not remember the date of birth of his 4th child, as also, his eldest son. He could not remember the dates of other marriages, which he had participated in the year 1974. To a specific question as to how he remembers the date of marriage between Radhakrishnan and Leela, he would state that the same is only because he was made a witness in this case. One another reason which weighed with the learned Sub Judge to disbelieve DW2 is his



version regarding the '*Karanavar*', who represented the bride. DW2, in cross-examination, deposed that the *Karanavar* on the side of Leela was one Marakkal Manthan; whereas DW3 referred the name of another person, as *Karanavar*.

17. Before addressing the trustworthiness of DW2, this Court will also refer to the evidence tendered by DW3. DW3 would also specifically speak of the marriage taking place on 24.03.1974 at the house of Leela. He also deposed about the ceremonies and rituals attached to the marriage, which is in tandem with the deposition by with DWs 1 and 2. The specific rituals of handing over *pudava*, tying the *thali* etc. were spoken to by DW3, as well. In cross-examination, he would state that he was informed of the case by the brothers of Leela 2-3 months before evidence and accordingly, he remembered the date. In cross-examination, DW3 would state that the marriage took place at 11:30 a.m. He would also admit that he could not remember the dates of other marriages, which he attended in the year 1974. He



remembered the date only when Leela's brother told him about the case. As regards the date of marriage, he would relate it to the festival of one Cheerpakavu temple, which according to the DW3 is on 25th and 26th of the month *Kumbham*. As regards *Karanavar* on the part of Leela, DW3 would state that it is one Valeri Kunjikannan, which is contrary to the name referred by DW2.

18. It is on the strength of these evidences that the Court is called upon to decide whether a marriage was solemnised by and between late Radhakrishnan and Leela. Here, this Court may pause for a moment to state that the enquiry with respect to solemnisation of the marriage is only for the limited purpose of ascertaining a claim under Section 16 of the Hindu Marriage Act. It is not as if, this Court is deciding a claim as regards the validity of the marriage, where the valid pre-requisites of a Hindu Marriage may have to be gone into. All what a Court of law is expected to ensure before recognising a claim under Section 16 of the Hindu Marriage Act is a marriage, for the



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limited purpose of ascertaining an institutionalised relationship between the parents of the illegitimate child. In elaboration, it only means that there should be a marriage or a relationship in the nature of marriage, where such parents were living as husband and wife, openly to the notice of others; and not a secretive relationship, which has been described by the Hon'ble Supreme Court, as a '*walk in and walk out*' relationship in ***Madan Mohan Singh and Others v. Rajni Kant and Others*** [AIR 2010 SC 2933]. All what this Court wants to clarify is that the solemnisation of a marriage - which may, in a given case, fall short of all the ceremonies, rituals and prerequisites - may also qualify as a marriage for the limited purpose of Section 16, to assign legitimacy to the children born in such relationship. It is bearing in mind this principle and policy embodying Section 16 that the question at hand is required to be addressed.

19. As already indicated, specific pleadings in the written statement is supported by the evidence tendered by



DWs 1 to 3. DW1 would narrate the date and all other details of marriage, the place where it was solemnised, and also, the rituals and ceremonies, which were performed in connection with the marriage. She would categorically state that she was taken to the house of her husband on the date of marriage, where they have lived as husband and wife. After the birth of the 9th defendant, they lived as husband and wife at the place, where late Radhakrishnan was working. Until his death, Radhakrishnan had taken care of all the requirements of Leela and the 9th defendant. He died at Thundiyl, where he had constructed a house. However, the funeral ceremonies were conducted at his parental house and the rituals in connection therewith was done by the 9th defendant. In this regard, it is worthwhile to refer to the evidence tendered by the plaintiff/PW1 to the effect that she is not aware as to, where the funeral ceremony of late Radhakrishnan took place and who performed the rituals. Nothing tangible, which will erode the veracity of the statement made by DW1, is seen elicited in the cross-examination, except propounding Ext.B1, which will be dealt



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with separately, later. DW1 cannot be found fault with for not keeping the invitation letter in respect of a marriage, which took place in the year 1974, when she adduced evidence in the year 1989. It is elicited in cross-examination that the family members of Radhakrishnan were also present in the marriage.

20. This Court may also take stock of one another aspect, which has been established in evidence tendered by PW1, the plaintiff, in her cross-examination. In the marriage between late Radhakrishnan and PW1/plaintiff, no child was born. It has also come out in evidence that PW1/plaintiff was residing away from late Radhakrishnan for quite sometime, though PW1 would try to explain that the same was in connection with the rest required after a surgery. This aspect coupled with PW1's ignorance as regards place, where late Radhakrishnan's funeral was conducted and the person, who performed the rituals, would only indicate that their relationship was more or less estranged, though it was not legally separated. In the backdrop of the above facts, it



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is only reasonable to infer, in the yardstick of preponderance of probabilities, that late Radhakrishnan has married Smt.Leela, especially when Radhakrishnan had no child born in his first wedlock.

21. As already indicated, the date and all specific particulars constituting, the ceremonies and rituals of marriage were corroborated by the evidence tendered by DWs 2 and 3. A doubt on the veracity of their deposition is raised only on account of they remembering the precise date of marriage. Both the witnesses have spoken that they were put to notice that they are cited as witnesses in the instant case. In such circumstances, it is only normal, before a person mounts the box in a Court of law, to make enquiries with respect to the facts of the case and to ascertain the same before deposing before Court. Therefore, remembering the date of marriage or for that matter, not remembering other events which took place at the relevant time, cannot, by itself, cast any doubt or suspicion on the veracity or genuineness of the deposition made by DWs 2



and 3. This Court, therefore, cannot endorse the findings of the learned Sub Judge that DWs1 to 3 are not reliable and hence the marriage between late Radhakrishnan and Smt.Leela is not proved in accordance with law.

22. Coming to Ext.B1, it is true that what has been described is a 'relationship' between late Radhakrishnan and Smt.Leela; and not 'marriage' as such. However, it specifically refers to the earlier marriage of late Radhakrishnan, in the same sentence, where it has been referred as a 'relationship' between Radhakrishnan and Leela. It also speaks of the 9th defendant being born in that relationship. When PW1 mounted the box, she would depose in the cross-examination that it was so worded to avoid a criminal prosecution, obviously for bigamy due to the existence of the previous marriage. It could thus be seen that DW1 has given a plausible explanation for narrating the marriage between herself and Radhakrishnan as a 'relationship' in Ext.B1. That apart, it is common knowledge that the words, as such, employed in a document



are not dictated by the parties, but one chosen by the person, who drafts the document. Of course, the facts will be narrated by the parties, but the precise words will be chosen and employed by the document writer. It is not clear from Ext.B1 as to who drafted the same. Therefore, a fatal deduction to the effect that, in between Radhakrishnan and Leela, there was only a 'relationship', short of marriage, is impermissible in law. Ext.B1 was necessitated for making a provision for the 9th defendant, until he attains majority, especially for his education and other needs. A deposit made in his name is provided to be realised by the 9th defendant, after attaining majority. The further recitals in Ext.B1 to the effect that all the liabilities between Radhakrishnan and Leela ceased to exist upon execution of Ext.B1 etc., cannot have any deleterious impact on the rights of the 9th defendant in terms of Section 16 of the Hindu Marriage Act.

23. Having found the applicability of Section 16 of the Hindu Succession Act, the next question is with respect to



the nature of the divisions/partition among the legal heirs. It is admitted before me that item nos.1 and 2 belonged to Kunjiraman, who is the husband of the 1st defendant and father of deceased Radhakrishnan and defendants 2 to 8. It could thus be seen that, items 1 and 2 in the plaint belong to the grandfather of D9, the illegitimate child. Section 16(3) of the Hindu Marriage Act is relevant and is extracted hereunder:-

“16. Legitimacy of children of void and voidable marriages:-

(1) xxxx

(2) xxxx

(3) Nothing contained in sub-section (1) or sub-section (2) shall be construed as conferring upon any child of a marriage which is null and void or which is annulled by a decree of nullity under section 12, any rights in or to the property of any person, other than the parents, in any case where, but for the passing of this Act, such child would have been incapable of possessing or acquiring any such rights by reason of his not being the legitimate child of his parents.”

(Underlined by me, for emphasis)



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24. Going by the same, the illegitimate child is conferred a right only in respect of the property of his/her parents; and not in the property of any person, other than the parents. Therefore, the question which looms large is whether the 9th defendant/the illegitimate child - can lay his hands on the property (described as items 1 and 2 in the plaint) of his grandfather.

25. Having heard the learned Counsel appearing for the respective parties on this point, this Court is of the opinion that D9 can. It has to be conceived that right to property will take different shape and form depending upon the nature of such rights. There may be properties wherein the parents of an illegitimate child may have complete rights; yet, there may be other categories where the parents have incomplete or undivided rights over such property. In the instant case, upon the death of Kunhiraman, (who pre-deceased Radhakrishnan),



Radhakrishnan obtained 1/9 right over the property of Kunhiraman; other shares devolving on his wife and 7 other children, i.e., D2 to D8. I am of the definite opinion that this undivided right falls within the expression of a 'property' in the hands of the parents, to which also, the 9th defendant (illegitimate child) gets a right, in terms of Section 16(3) of the Hindu Marriage Act. Thus, insofar as item nos. 1 and 2 are concerned, the right of 9th defendant is recognized and acknowledged.

26. Now, the issue is with respect to items 3 and 4. Items 3 and 4 were admittedly the self-acquired property of deceased Radhakrishnan, who is the father of the 9th defendant and the husband of the plaintiff. As such, D9 is certainly entitled to a share over those items of properties. Upon the death of Radhakrishnan, one share over items 3 and 4 devolved upon his mother Nani, who was alive at that time, as per Section 8 of the Hindu Succession Act. Insofar as the applicability of Section 8 is concerned, there is no quarrel for either of the parties before this



Court. The contentions of the respective parties, as reflected in the pleadings, would vouch the said aspect. Now, upon the death of Nani, her share will devolve upon her children namely D2 to D8, and also upon the son of the pre-deceased son. The piquant issue is whether the 9th defendant, the illegitimate son of Radhakrishnan, will come within the expression 'son of a predeceased son'. This court is persuaded to answer the issue in the negative. Here, it is relevant to note that, a special status, in the context of succession, is given to an illegitimate child, by giving the notion of legitimacy to children born in void or voidable marriages, as per Section 16 of the Hindu Marriage Act. Such colour of legitimacy for the purpose of succession has to be confined to the rights conferred under Section 16 only; and the same cannot be extended to the rights emanating from any other provision of the Hindu Succession Act. When Section 16 specifically speaks of the right being confined to the properties held by the parents and by none else, it cannot be said that the 9th defendant will acquire a fractional right in the share held by Nani,



in his capacity as the son of a pre-deceased son. In other words, he cannot be deemed and regarded as a 'son' of a pre-deceased son; instead, he is only the 'illegitimate son' of the pre-deceased son, and hence cannot be considered as a Class I heir. But for the right conferred in terms of Section 16, no other right can be conferred or inferred in favour of an illegitimate son. Therefore, the said contention will stand rejected.

27. In the light of the above discussion, the judgment and decree under challenge cannot be sustained and the same is hereby set aside. However, the partition sought for by the plaintiff is allowed, recognising one share to the 9th defendant.

28. Wherever, there is reference to appellants and respondents here below, the same will be based on the status as reflected in A.S.No.530/1990.

29. For the purpose of division, the plaintiff A schedule



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items 1 and 2 has to be treated separately from plaint A schedule items 3 and 4.

Partition of items 1 and 2 of plaint A schedule property:

In this regard, the following aspects are taken stock of. As indicated earlier, these items originally belonged to Kunhiraman and upon his death, the same devolved upon his wife Nani (D1), son Radhakrishnan (no more) and his children, who are arraigned in the plaint as defendants 2 to 8, each taking $1/9$ share. Upon the death of Radhakrishnan on 18.07.1987, his $1/9^{\text{th}}$ share devolved upon his mother (D1), wife (plaintiff) and his illegitimate son (D9). Thus the share of D1/Nani became $4/27$ [$1/9 + (1/3^{\text{rd}}$ of $1/9)$]. Plaintiff and the 9^{th} defendant, both, obtained $1/27$ shares ($1/3^{\text{rd}}$ of $1/9$ each). Defendants 2 to 8 obtained $3/27$ shares each.

Now, the division of shares pursuant to the death of the parties pending appeal, are depicted as follows:

- D1 Nani died pending appeal and her $4/27$ shares will go to her children, namely, defendants 2 to 8.



- Defendants 2 and 3, Soumini and Rukmini executed a Will bequeathing their rights in favour of defendants 4, 6 and 8, namely, Sarojini, Raveendran and Ramachandran. Thus, a total of 6/27 shares of Soumini and Rukmini taken together will go to defendants 4, 6 and 8.
- Out of the above, the 6th defendant Raveendran passed away and his share will go to the legal representatives, who are appellants 13 to 16. Thus, the 4th defendant will get 2/27 shares; the 8th defendant will get 2/27 shares; and appellants 13 to 16 (being the LRs of the 6th defendant) together will get 2/27 shares.
- Upon the death of D5 Sathi, her 3/27 shares will go to her husband Bharathan (9th appellant) and her daughter Radhika (10th appellant). Since Bharathan is also no more, his share will also go to the 10th appellant, Radhika. Thus, Radhika (appellant no.10) gets 3/27 shares of Sathi.
- Upon the death of D7 Suseela, her 3/27 shares will



go to the legal heirs, who are appellants 11 and 12.

- (1) In the light of the above discussion, the 4th defendant Sarojini will get 500/2268 shares, which includes 1/7th share of her mother Nani and 1/3rd share of defendants 2 and 3 (bequeathed by Will).
- (2) The 8th defendant Ramachandran will get 500/2268 shares, which includes 1/7th share of his mother Nani and 1/3rd share of defendants 2 and 3.
- (3) The 10th appellant Radhika will get 300/2268 shares, corresponding to the share due to her mother Sathi (D5).
- (4) A11 and A12 will get 150/2268 shares, each getting half of the share due to their mother Suseela (D7).
- (5) Appellants 13 to 16 being the legal heirs of the 6th defendant Raveendran will get 1/4th each of the share due to Raveendran. Thus, A13 to A16 will get 125/2268 shares each.
- (6) The 9th defendant (the illegitimate son) will get a share, which corresponds to 84/2268 shares.



- (7) Supplemental respondents 3 and 4 (C.P.Sukumaran and C.P.Ganesan) will get $1/3^{\text{rd}}$ share each of deceased 1st respondent, Radha. Thus, both getting 28/2268 shares each.
- (8) Supplemental respondents 5 and 6 (being the legal heirs of one Haridasan, the son of the deceased 1st respondent, Radha) will get $1/2$ each of the $1/3^{\text{rd}}$ share of the 1st respondent, to which Haridasan was entitled to. Thus, both R5 and R6 will get 14/2268 shares.

Partition of items 3 and 4 of plaint A schedule; and B schedule property:

On these items, which are the self-acquired properties of deceased Radhakrishnan, D1 Nani, the plaintiff Radha and the 9th defendant Sreejith @ Abhilash are entitled to $1/3^{\text{rd}}$ shares each. On the death of D1 Nani, her $1/3^{\text{rd}}$ share will devolve upon defendants 2 to 8 equally. On the death of D5 Sathi, her share will devolve upon appellants 9 and 10. Similarly on the death of D7 Suseela, her share will go to appellants 11 and 12. On the death of D6 Raveendran, his share will devolve upon appellants 13 to 16. As indicated



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earlier, D2 and D3 (Soumini and Rukmini) executed a Will bequeathing their right in favour of D4 Sarojini, D6 Raveendran and D8 Ramachandran. The shares of Soumini and Rukmini taken together will thus go to defendants 4 and 8 and also to appellants 13 to 16. Upon the death of the 1st respondent (plaintiff), her share goes to respondents 3, 4 and one Haridasan and upon the death of Haridasan; his share will go to supplemental respondents 5 and 6.

Resultantly:

- (1) The 4th defendant Sarojini is entitled to 20/252 shares, including the 1/7th share of D1 Nani and 1/3 share of defendants 2 and 3.
- (2) D8 Ramachandran is entitled to 20/252 shares, which includes 1/7th share of D1 Nani and 1/3rd share of defendants 2 and 3.
- (3) Appellant no.10 Radhika is entitled to 12/252 shares corresponding to the share, which was due to D5 Sathi.
- (4) Appellant nos.11 and 12, each are entitled to 6/252 shares corresponding to 1/2 of the share due to the 7th defendant Suseela.



- (5) Appellants 13 to 16 are entitled to 5/252 shares each, corresponding to their 1/4th share each in the share of 6th defendant Raveendran.
- (6) The plaintiff is entitled to 84/252 shares corresponding to his 1/3rd share of the property.
- (7) Supplemental respondents 3 and 4 are entitled to 28/252 shares corresponding to 1/3rd share of deceased R1 Radha (plaintiff).
- (8) Supplemental respondents 5 and 6 are entitled 14/252 shares each, corresponding to one-half of the share, which belonged to Haridasan, the son of the deceased 1st respondent Radha.

The parties to suffer their respective costs. These appeals are allowed accordingly.

Sd/-

C.JAYACHANDRAN, JUDGE

ww/ska