

IN THE HIGH COURT OF KERALA, ERNAKULAM

Third day of March, 1958.

Present

The Hon'ble Mr. Justice G. Kumara Pillai      a n d  
The Hon'ble Mr. Justice C.A. Vaidialingam.

A.S. 391 of 1948 (M)

O.S. 8/1945 Subordinate Judge's Court, South Malabar,  
Kozhikode.

Appellant-Plaintiff.

Pokkencheri Gopalakrishna Vaidyar, residing in Kasba and  
desom, Calicut taluk (Died)

Addl. Appellants:

2. Sunanda, wife of deceased appellant, residing at Ala Amson desom  
Ponnani taluk, South Malabar.
3. Geethamani of do. do. (minor) aged 5.
4. Sophana of do. do. (minor) -aged 2  
Brought on record as the legal representative of deceased  
appellant -Vide order dt. 9-12-54 on C.M.P. 9833/54.  
Minors 3 & 4 are represented by their mother and next friend  
the 2nd appellant.

By advocates M/s. K. Kuttikrishna Menon, C.K. Viswanatha Ayyar and  
S.R. Subramania Iyer.

Respondents: Defts. 1 to 10, 12 to 23, 26, 27, 31.

1. Pokkancheri Govindan Vaidyar, son of Chettunni Vaidyar  
family manager, (died).
2. His son Atmaraman (minor) since declared major
3. Narendran (minor)
4. P. Sreedharan son of Chettunni Vaidyar
5. P. Ramakrishnan
6. His son Vikrama Singh (minor)
7. Jayethilaken (minor) by guardian 5th defendant.
8. P. Bhaskaran son of Chettunni Vaidyar
9. His son Gunavardhanan (minor 3 years) by guardian 8th deft.
10. P. Chanthu son of Raman Vaidyar
11. Mohan (minor) 14 years
12. Govindan son of Madhavan Vaidyar
13. His brother Sarvathamman
14. Ratnachandran (minor aged 16 years) since declared major
15. Dass (minor) since declared major
16. Chandukutty (minor) since declared major
17. P. Gengadharan
18. His son Jayasenan (minor)
19. P. Purashotheman
20. P. Balakrishnan
21. His son Sreevalsan (minor)
22. Madhavan (minor)
23. Ottukkathil Gopalan
24. Kariyatti Chikkunni
25. Pokkancheri Madhavi Amma wife of 1st defendant.  
Respts. 2 & 3 by guardian 1st respt.  
Respts. 6 & 7 by guardian 5th respt.  
Respt. 11 by guardian 10th respondent.  
Respts. 14, 15 and 16 by guardian 12th respondent.  
18th respt. by guardian 17th respondent.  
Respts. 11 & 22 by guardian the 20th respondent.
26. Lalitha
27. Leela
29. Thiriguramadavi.  
Respts. 2 & 3 are recorded as the L.Rs of deceased 1st respondent.  
Respts. 26 to 28 were brought on record as the L.Rs of deceased  
1st respondent -Vide order dt. 2-2-55 on C.M.P. 139/55.

1st Respt by Advocate Sri K.N. Karunakaran

10th Respt. by advocate Sri N. Sundara Iyer.

24th respt. by advocate Sri V.P. Gopalan Rambiar.

This appeal having been heard on 3-3-1958, the Court on the  
same day delivered the following

JUDGMENT:

Kamara Pillai & Vaidialingam, JJ.

A.S.No. 391 of 1948.(W).

Judgment.

Delivered by Vaidialingam, J.

The short point for decision in this appeal is whether the plaintiffs and the defendants 1 to 23 are members of the Pookantheri tarwad and as to whether the plaintiffs <sup>is</sup> ~~are~~ entitled to claim a partition in the properties owned by the said tarwad. The learned Subordinate Judge, without going into the other questions, has dismissed the suit on the preliminary ground that the plaintiffs <sup>is</sup> ~~are~~ not a members of the Pookantheri tarwad and as such <sup>he is</sup> ~~they are~~ not entitled to claim partition in the properties owned by the said tarwad. Among the documents filed in these proceedings there is some evidence to support the claim of the plaintiffs that they belong to the tarwad of defendants 1 to 23. The said documents are Exs.A-1, A-2, A-3, A-5, A-14, B-7, B-9, B-13 and B-76.

2. After the appeal was argued in part, it is now represented before us that all parties are agreed that for the purposes of these proceedings the plaintiffs will be considered to be members of the tarwad and entitled to partition. The learned counsel appearing for all parties are also agreed that the share of the plaintiffs will be one-tenth in the said properties. In view of this agreement, a preliminary decree will be passed declaring the rights of plaintiffs to one-tenth share in the properties belonging to the tarwad.

3. The decree of the trial court is in consequence

set aside and the suit remanded for disposal of all the other points arising for decision in the case. The cost of all parties both here and in the trial court will come out of the estate. The court fee paid on the memorandum of appeal in this court will also be refunded.

3. 3. 1958.

At. G. Kumara Pillai, In lye  
At. C. A. Vaidiklingam, In lye

✓  
L. S. S. S. S.  
K. R. - Agies

True Copy

S. S. S. S. S.  
At. Registrar