

**T.D.Ummer vs Abdul Salam**

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**SooperKanoon Citation :** [sooperkanoon.com/1295200](https://sooperkanoon.com/1295200)

**Court :** Kerala

**Decided On :** Dec-06-2024

**Judge :** Honourable Mr. Justice M.a.Abdul Hakhim

**Appeal No. :** RSA/987/2017

**Appellant :** T.D.Ummer

**Respondent :** Abdul Salam

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE M.A.ABDUL HAKHIM  
FRIDAY, THE 6TH DAY OF DECEMBER 2024 / 15TH AGRAHAYANA,  
1946 RSA NO. 987 OF 2017 AGAINST THE JUDGMENT AND DECREE  
DATED 07.04.2017 IN AS NO.34 OF 2016 OF DISTRICT COURT,  
KASARAGOD ARISING OUT OF THE JUDGMENT AND DECREE  
DATED 22.03.2016 IN F.D.I.A IN OS NO.36 OF 2007 OF PRINCIPAL  
MUNSIFF, KASARAGOD APPELLANT/APPELLANT/7TH  
DEFENDANT/7TH RESPONDENT: T.D.UMMER AGED 64 YEARS  
S/O.T.D.HASSAN, MUSLIM, LANDHOLDER, R/AT T D HOUSE,  
CHATTANCHAL, THEKKIL VILLAGE, P.O.THEKKIL, KASARGOD. BY  
ADVS. SRI.D.NARENDRANATH SRI.M.HARISHARMA SRI.SOJAN

MICHEAL RESPONDENTS/RESPONDENTS/PLAINTIFF &  
DEFENDANTS 1 TO 6 AND 8 /RESPONDENTS 1 TO 6 AND 8: 1  
ABDUL SALAM AGED 44 YEARS S/O.K.M.ABDUL KHADER AND R/AT  
ZAMZAM VILLA, IQBAL ROAD, POST KOLAVAYAL, AJANUR  
VILLAGE,

2 K.A.MUHAMMED KUNJHI AGED 67 YEARS S/O.K.M.ABDUL  
KHADER AND R/AT CYLON MANSIL, CHANLIGNAL POST, HARI  
PURAM, PULLUR VILLAGE, 3 FATHIMA AGED 65 YEARS DAUGHTER  
OF K.M.ABDU KHADER AND UMMAKULSU @ UMMALU, R/AT  
PANAYARA, CHATANCHAL, THEKKIL VILLAGE AND POST,  
KASARGOD TALUK, PIN-671541. 4 K.A.MOIDEEN KUNJHI AGED 63  
YEARS SON OF K.M.ABDUL KHADER AND R/AT CYLON MANSIL,  
CHANLIGNAL POST, HARI PURAM, PULLUR VILLAGE, 5  
K.A.MAYAMOONA AGED 62 YEARS DAUGHTER OF K.M.ABDUL  
KHADER AND WIFE OF ABOOBACKER, R/AT RAHMANIA MANZIL,  
OPP.PADME POLY CLINIC, NORTH KOTTACHERY, P.O.  
KANJHANGAD, ANANUR VILLAGE, 6 AYISHA AGED 51 YEARS  
DAUGHTER OF K.M.ABDUL KHADER AND WIFE OF MUHAMMED  
KUNJHI, R/AT MELAM, BEVINJA, P.O.CHENGALA, KASARGOD  
TALUK, 7 K.A.ZARABI AGED 49 YEARS DAUGHTER OF K.M.ABDUL  
KHADER AND WIFE OF T.D.UMMER, R/AT T.D.HOUSE,  
CHATANCHAL, THEKKIL VILLAGE AND POST, KASARGOD TALUK,  
PIN-671541. 8 ABOOBACKER AGED 75 YEARS AGED 75 YEARS,  
SON OF ABDUL KHADER, R/AT THE RAHMANIA MANZIL,  
OPP.PADME POLY CLINIC, NORTH KOTTACHERY,  
P.O.KANJHANGAD ANANUR VILLAGE, BY ADVS. FOR R1  
SRI.A.BALAGOPALAN SRI.M.S.IMTHIYAZ AHAMMED SRI.LIJIN  
JOSEPH SRI.A.RAJAGOPALAN SMT.RESHMI GOPALAKRISHNAN  
SMT.P.SEENA SMT.A.S.SHYAMA THIS REGULAR SECOND APPEAL  
HAVING COME UP FOR ADMISSION ON 06.12.2024, THE COURT ON  
THE SAME DAY DELIVERED THE FOLLOWING:

## JUDGMENT

1. The 7th defendant in the suit for partition is the appellant.

The challenge is against the final decree. As per the preliminary decree, the decree scheduled property was ordered to be divided into 30 equal shares and the plaintiff is entitled to 2/30 shares and the defendant No.7 is entitled to get the balance 28/30 share.

2. The total decree schedule property available for partition is

41.5 cents of land. Admittedly, towards the share of the 1st respondent/plaintiff, 2 cents 238 Square Links in Re- survey No.1/8C is allotted and towards the share of the 7 th defendant, 3 cents 300 Square Links in Re-survey No.1/7A and 28 Cents 37 Square Links in Re-survey No.1/8A was allotted. The portion marked as 1/7A and

3. According to the appellant, the extent reserved for road and drainage would comes to 6.86 cents.

4. I heard the learned counsel for the appellant Sri.M.Hari Sharma and the learned counsel for the 1st respondent Sri.Imthiaz Ahammed.

5. The learned counsel for the appellant argued that though

the plaintiff is entitled to get only 2/30 share when the road and drainage reserved for access to his property having 2.238 cents, he would be getting more than three times than his share. There is already a road from the southern side of the property to the 7th defendant and hence the 7th defendant is not in need of another road and hence the finding of the First Appellate Court that the road is beneficial to both the parties is incorrect.

6. The learned counsel for the 1st respondent/plaintiff argued that the road and drainage is reserved for the benefit of both the parties and it is not exclusively allotted to the 1 st respondent/plaintiff.

7. On going through the impugned order and the Plan made

available before me by the counsels, I find that the 1 st respondent/plaintiff is allotted only 2 cents 238 square links exclusively in re-survey No.1/8C. As submitted by the learned counsel for the contesting respondents, the way is not allotted to the share of the 1 st respondent/plaintiff. The way is intended for the benefit of both the parties. In the Commission Report also it is specifically stated that the way is reserved for the benefit of both the parties. In such situation it could not be said that on account of the allotment of way having an extent of 6.86 cents the 1 st respondent/plaintiff is getting a higher share. Though the learned counsel for the appellant contended that there is another way from the southern side, on going through the Objection filed by the appellant to the Commission Report, no such contention is seen taken in the objection. No contention is raised stating that the way is exclusively reserved for the 1st respondent/plaintiff. Since the way is reserved for the benefit of both the parties and the same is admitted by the 1st respondent/plaintiff, I do not find any error or illegality in the final decree passed by the Trial Court which is confirmed by the First Appellate Court.

8. Accordingly, this Regular Second Appeal is dismissed. Sd/- M.A.ABDUL HAKHIM JUDGE sms

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