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DISTRICT SOUTH 24 PARGANAS:

In the Court of Learned 5<sup>th</sup> Civil Judge (Senior Division) at Alipore.

Title Suit No. 187 of 2011

SANKAR GHOSH, son of Late Panchanan Ghosh, by faith-Hindu, by occupation-Service, residing at 43, Anjuman Ara Begum Row, Police Station-Jadavpur, Kolkata-700033.

.....Plaintiff

- Vs -

✓ 1. RAMALA GHOSH, wife of Late Panchanan Ghosh

✓ 2. SWAPAN GHOSH, son of Late Panchanan Ghosh both residing at 43, Anjuman Ara Begum Row, Police Station-Jadavpur, Kolkata-700033.

✓ 3. KALPANA BANERJEE, daughter of Late Panchanan Ghosh, wife of Vivekananda Banerjee, residing at 90, Maitrai Park, Police Station-Regent Park, Kolkata-700070.

✓ 4. ALPANA RAHUT, daughter of Late Panchanan Ghosh, wife of Sandip Rahut, residing at 62/13, Haripada Dutta Lane, Police Station-Jadavpur, Kolkata-700033.

5. JYOTSNA GHOSH, wife of Late Ajit Kumar Ghosh.
6. BASUDEV GHOSH, son of Late Ajit Kr. Ghosh both are residing at 43, Anjuman Ara Begum Row, Police Station-Jadavpur, Kolkata-700033.
7. JAYA BISWAS, daughter of Late Ajit Kr. Ghosh, wife of Sri Narayan Biswas, residing at Rajendra Prasad Colony, Police Station-Jadavpur, Kolkata-700033.
8. KEYA GHOSH, daughter of Late Ajit Kr. Ghosh wife of Subir Ghosh, residing at 10/18, Banku Behari Ghosh Lane, Bally, Howrah.
9. PRABIR KUMAR GHOSH, son of Late Kali Charan Ghosh alias Kalipada Ghosh, residing at 43, Anjuman Ara Begum Row, Police Station-Jadavpur, Kolkata-700033.

.....Defendants

10. SAILLEN GHOSH, son of Late Kali Charan Ghosh alias Kalipada Ghosh, residing at 18/1D, Dharendra Ghosh Road, Bhowanipore, Police Station-Bhowanipore, Kolkata-700025.

.....Proforma  
Defendant

SUIT FOR DECLARATION, PARTITION AND INJUNCTION  
VALUED AT RS. 10,01,200/- ONLY

The humble petition of the Plaintiff  
above named most respectfully.

Most Respectfully Sheweth:-

1. That at all material time one Kali Charan Ghosh alias Kalipada Ghosh was the Owner of ALL THAT piece and parcel of land measuring 3(three) Cottahs, 2(two) Chittacks, 75(seventy five) Square Feet together with one storied brick built building standing thereof at 43, Anjuman Ara Begum Row, Police Station-Jadavpur, Kolkata-700033 (hereinafter called the suit premises).
2. The said Kali Charan Ghosh died on 10.09.1962 leaving behind surviving six sons namely Panchanan Ghosh, Ajit Kumar Ghosh, Sailen Ghosh, Sukumar Ghosh, Rabin Kr. Ghosh and Prabir Kumar Ghosh as his legal heirs and legal representatives.
3. On demise of Kali Charan Ghosh alias Kali Pada Ghosh the said six sons of said Kali Charan Ghosh acquired right, title and interest in respect of the said property by virtue of inheritance or in other words became joint Owners in respect of the suit property.
4. That in course of use and enjoyment of the said sons with their family members one of the sons Rabin Ghosh left the premises and started living at Cuttack. He was unmarried but after 1984 whereabouts of said Rabin Ghosh was not traceable by the other brothers and other members of the family.

5. That sometime in the year 1985 the Sukumar Ghosh the 4<sup>th</sup> son of Kali Charan Ghosh alias Kali Pada Ghosh received the message followed by letter that Shri Rabin Ghosh left the world for good. Afterwards, the said sons of Panchanan Ghosh, Ajit Kumar Ghosh Sailen Ghosh, Sukumar Ghosh and Prabir Ghosh frantically searched out but they could not finding any trace of Rabin Ghosh, son of Kali Charan Ghosh.
6. Rabin Ghosh, after leaving the house sometime in the year 1972 never came back in the suit premises even after 1984 when Sailen Ghosh received the information and later on by the predecessors-in-interest of the present Plaintiff and Sailen Ghosh the Defendants and the Proforma Devendant No. 10 who is brother and Proforma Defendant herein failed to get any trace either physically or otherwise from anywhere or any end. Since Rabin Ghosh is unheard for more than seven years, it is presumed to be declared that he is dead.
7. That after demise of Kali Charan Ghosh and on receiving the information of Rabin Ghosh also known as Gopali another son of Kali Charan Ghosh alias Kali Pada Ghosh, Ajit Kumar Ghosh, one of the sons of Kali Charan Ghosh alias Kali Pada Ghosh died some time in the year 1986 leaving behind him surviving his wife Jyotsna Ghosh, Basudeb Ghosh, Jaya Biswas and Keya Ghosh, Defendant Nos. 5, 6, 7 and 8 herein as his legal heirs and legal representatives.
8. That on 18<sup>th</sup> April 2005 Sailen Ghosh, another son of Kali Charan Ghosh alias Kali Pada Ghosh being Proforma Defendant No. 10 herein gifted his right, title and interest in respect of his share of the property to the Plaintiff by Registered Deed of Gift out of love and affection although he

is temporally occupying in the said premises under the care and control of the Plaintiff. Since he has no interest in the property and since the declaration of death or unheard of Rabin Ghosh for more than 7(seven) years is required, he has been made as party Defendant to the suit.

9. On 04.10.2010 another son Sukumar Ghosh passed away as bachelor, thus his right, title and interest in the property devolved upon all the heirs of Kali Charan Ghosh alias Kali Pada Ghosh or in other words 1/4<sup>th</sup> share Sukumar Ghosh unto the heirs of Panchanan Ghosh, Ajit Ghosh, Salien Ghosh and Prabir Ghosh and subsequently unto their legal heirs namely the Plaintiff and the Defendants herein.
10. That while using and enjoying the property jointly by the present Plaintiff and the Defendants for the better enjoyment of the property they are very much interested to record their names in the Record of K.M.C. as recorded Owners thereof. Accordingly, they applied before the Kolkata Municipal Corporation for mutation. At that time real hurdle cropped up from the end of Kolkata Municipal Corporation that a declaration of unheard or death of Rabin Ghosh is required from the Court of competent Jurisdiction.
11. Plaintiff states that Rabin Ghosh since 1984 is unheard and predecessor-in-interest of the Plaintiff and the Defendants and the Proforma Defendant No. 10 frantically searches to their best information of deceased brother but all their efforts were in vain. As he is unheard for more than seven years and all records are not available as it was lying with Panchanan Ghosh and Ajit Ghosh save and except a telegraphic message and a letter no other document left out with the Plaintiff and

- the Defendants. As such, the Plaintiff seeks redress before this Learned Court for declaration dead that said Rabin Kr. Ghosh (nick name Gopali) is unheard for more than 7(seven) years.
12. The Plaintiff further states and submits that Rabin Ghosh is presumed to be a dead person or unheard. The Plaintiff and other co-owners including Proforma Defendants are residing in the house jointly without any interference.
  13. The Plaintiff thus being the Co-Owner of undivided 1/20<sup>th</sup> share from Panchanan Ghosh by inheritance and acquired 1/4<sup>th</sup> share from Sailen Ghosh by Registered Deed of Gift which was registered on 18<sup>th</sup> April, 2005 and recorded in Book No. I, Volume No. 218, Pages 155 to 181.
  14. Be it noted that by virtue of inheritance and the aforesaid Gift and Plaintiff is the Owner of undivided and other Defendant 1 to 4 by virtue of inheritance became Owner of 1/20<sup>th</sup> share each.
  15. That Plaintiff further states and submits that on demise of Ajit Kumar Ghosh his heirs namely Jyotsna Ghosh, Basudeb Ghosh, Jaya Biswas and Keya Ghosh being the Defendant Nos. 5 to 8 also have acquired right, title and interest in respect of the said property by virtue of their share of undivided 1/16<sup>th</sup> share each.
  16. The Plaintiff further states and submits that since Sailen Ghosh the Proforma Defendant herein son of Kali Charan Ghosh alias Kali Pada Ghosh although gifted his 1/4<sup>th</sup> share in respect of the suit house unto and in favour of Plaintiff out of love and affection but residing in the suit house. But for the sake of convenience and declaration and to state the

actual affairs with regard to the declaration of death or unheard of Rabin Ghosh he has been made Party Defendant to the suit as Proforma Defendant. No further relief sought for against the said Defendant in the instant suit.

17. The Plaintiff further states and submits that by virtue inheritance Prabir Ghosh is residing in the said house having 1/4<sup>th</sup> share in respect of property derived from his father and other Sukumar Ghosh brother who died bachelor.
18. That the Plaintiff and the Defendants are jointly using the premises. Now facing hardship as portion of the premises has been let out to a tenant under the Plaintiff and eviction of such tenant is not possible without being partition of the property although the said tenant admitted the Plaintiff is his landlord in respect of the suit premises. Such tenant is depositing rent before the Learned Rent Controller at Calcutta. The rent is so meagre and the requirement of Plaintiff is so acute and now without the eviction of the tenant Plaintiff cannot enjoy his share and eviction of tenant is not possible even without partition. The Plaintiff has no other recourse but to file this instant suit for partition.
19. The Plaintiff further states and submits that the Plaintiff requested the Defendant for investing money for raising tall building in the said premises in terms of the amicable settlement or agreement they will enjoy the said building after making construction and words for the peaceful possession and enjoyment of the property.
20. The Plaintiff further submits that for the purpose of mutation, separation and partition, the Plaintiff requested the Defendant 1 to 4 and other Defendant by incurring expenses

for amicable partition but all such attempts are failed. Last of such attempt was made on when Corporation requested the parties for bring an order of a declaration for competent court of jurisdiction about Rabin Ghosh who is unheard more that 7(seven) years.

21. The Plaintiff further states and submits that the Plaintiff is using and enjoying the premises with his family members in a small portion of the property which is in a dilapidated condition, and the same is required to be repaired but requirement of the premises is also not possible without cooperation of the Defendants. The Defendants neither cooperating for raising the building nor accommodating for repairing the same. As such, the Plaintiff has no other recourse than to file a suit, as all attempts of the Plaintiff are futile. Last of such attempt was made on 20.11.2010.
22. The Plaintiff has already stated the share of the parties and situation of the title. As such, decree of Declaration is necessary that Rabin Ghosh is unheard for more that seven years and he is declared to be dead and since all attempts are failed as such Plaintiff also is entitled to get a declaration of the share in respect of the property to that effect of the parties.
23. Plaintiff accordingly states and submits the share of the parties to the suit in respect of suit premises is thus as follows:

Plaintiff	6/20 <sup>th</sup>
Defendant No. (1 to 4)	1/20 <sup>th</sup> each
Defendant No. (5 to 8)	1/16 <sup>th</sup> each
Defendant No. 9	1/4 <sup>th</sup>

24. The Plaintiff further states and submits that cause of action for the suit arose on 11.11.2010 when the Plaintiff requested the Defendant for amicable partition and thereafter on 28.12.2010 when they tried to make attempt for mutation and in compliance of Corporation Order on 12.01.2011 and lastly on 2<sup>nd</sup> June 2011, a Premises No. 43, Anjuman Ara Begum Row, Police Station-Jadavpur, Kolkata-700033.
25. For the purpose of jurisdiction of court fees that suit is valued at Rs. 1,000/- for declaration and Rs. <sup>Partition @ 10,00,000/-</sup> 200/- for <sup>injunction</sup> partition and as the whole of the Plaintiff and Defendants are in joint possession of the said suit property, accordingly, the valuation and court fees the suit is valued at Rs. 10,00,000/- and 100/- for partition and Rs. 100/- for injunction tentatively.
26. The Plaintiff has paid the court fees herein and undertakes to pay further court fees as may be directed by the Learned Court.

It is, therefore, prayed-

- a) For a preliminary decree be passed in respect of the Scheduled property declaring share of the Plaintiff having 6/20 share.
- b) Decree for declaration that Rabin Ghosh alias Gopali is dead as he unheard for more than seven years.
- c) Decree for declaration of the share of the parts in its present forms in respect of the suit property described in the Schedule hereunder.

- d) Injunction restraining the Defendants not to change the nature and character of the suit property as well as the part with possession of the suit property, till the disposal of the suit.
- e) For final decree for partition be passed against the Defendants if the Defendants failed to make an amicable settlement of the suit property described in the Schedule, herein within the period granted by the Learned Court and on the basis of the commissioner's final report may be attached therewith and the Plaintiff's share may be demarcated and settled by an allotment in terms thereof.
- f) Receiver.
- g) Costs of the suit.
- h) Such further relief or reliefs.

**SCHEDULE OF THE PROPERTY**

**ALL THAT** piece and parcel of land measuring more or less 3(three) Cottahs 2(two) Chittacks 75(seventy five) Square Feet together with one storied brick built building standing thereon Municipal Premises No. 43, Anjuiman Ara Begum Row, Police Station-Jadavpur, Kolkata-700033 within the Ward No. 94 butted and bounded as follows:-

- ON THE NORTH : by 10' wide Road;  
ON THE SOUTH : by Premises No. 44;  
ON THE EAST : by Premises No. 37;  
ON THE WEST : by 12' wide Road.

DOCUMENTS RELIED UPON

1. Death Certificate of Panchanan Ghosh, Ajit Kr. Ghosh and Sukumar Ghosh.
2. Copy of the letter and the telegram received, relating to position of Rabin Ghosh.
3. Reply to the K.M.C.
4. Request for Partition.
5. Copy of Deed of Gift.
6. Such other document and the correspondence as may be required at the time of hearing.

VERIFICATION

I SANKAR GHOSH, son of Late Panchanan Ghosh, by faith-Hindu, by occupation-Service, aged about 52 years, residing at 43, Anjuman Ara Begum Row, Police Station-Jadavpur, Kolkata-700033, do hereby verify and declare that the statements made in paragraphs are true to my knowledge and rest are my humble submissions before this Learned Court and I sign this Verification on this 28 day of July 2011 at my Advocate's Serista.

AFFIDAVIT

I, SANKAR GHOSH, son of Late Panchanan Ghosh, aged about 52 years, by faith-Hindu, by occupation-Service, residing at 43, Anjuman Ara Begum Row, Police Station-Jadavpur, Kolkata-700033. do hereby solemnly affirm and say as follows:-

1. That I am the Plaintiff in the instant suit and as such, I am well conversant with the facts and circumstances of the case and otherwise, competent and able to swear this Affidavit.
2. That the statements made in Paragraphs 1 to 23 are true to my knowledge and rests are my humble submissions before this Learned Court.

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**DEPONENT**  
*Identified by me*

*Advocate*