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C.S.No.75 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.10.2022

CORAM:

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

C.S.No.75 of 2020

Shanti Christel

.. Plaintiff

/versus/

Surendarnath

.. Defendant

This Civil Suit is filed under Order VII Rule 1 of CPC., 1908 read with Order IV Rule 1 of the High Court of Original Side Rules, prayed for a judgment and decree against the Defendants:-

a).To declare that the partition deed dated 27.07.1976 registered as Document No.4406/1976 on the file of the District Registrar, West Madras (presently Periamet SRO) in respect of the suit property as ab-initio null and void, invalid and non est in the eye of law and hence not valid and binding on the plaintiff;

b).To declare that plaintiff is the absolute owner in respect of the suit property;

c).To grant permanent injunction restraining the defendant, his men, servant, agent, subordinate or any other person claiming through him from in any manner alienating or encumbering the suit property in



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favour of the third parties by way of sale, settlement, release, mortgage, pledge, pawn or otherwise;

d).To grant permanent injunction restraining defendant, his men, agents, servants and subordinates from in any manner interfering with the plaintiff peaceful possession and enjoyment of the suit property; and

e).For the costs of the suit.

For Plaintiff	: Mr.S.L.Sudarsanam
Defendant	: ex-parte

JUDGMENT

The suit had been filed seeking a declaration that the partition deed dated 27.07.1976 registered as Document No.4406/1976 in the office of the District Registrar, West Madras, presently Sub-Registrar Office, Periamet, with respect to the suit property namely, Old Door No.23, New Door No.228B, Kilpauk Garden Road Lane, Kilpauk, Chennai – 600 010 as *ab initio* null and void, invalid and *non est* and not binding on the plaintiff and for a consequential declaration that the plaintiff is the absolute owner with respect to the suit property and for permanent injunction restraining the defendant from dealing with the said



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property or from interfering with the possession of the plaintiff.

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2.The defendant was served on 10.03.2020. The defendant did not file the written statement. The defendant was set ex-parte by an order of Court dated 08.07.2022.

3.The plaintiff's father, Mohinder Nath, had purchased the aforementioned property by way of two sale deeds both dated 21.07.1975. It is the case of the plaintiff that the property was therefore the absolute property of the father of the plaintiff.

4.For reasons best known, the father and his brother Surendarnath had entered into a partition deed with respect to the said property, which partition deed was dated 27.07.1976 and was registered as Document No.4406/1976 on the file of the District Registrar, West Madras, presently, Sub Registrar office, Periamet. The plaintiff came to know about this particular partition deed only in the year 2018, when her mother died. She then came to know that the father had a property at Chennai and made enquiries and found that a partition deed had been entered into with the brother of her father and that the said brother had no right, title or interest over the said property. It is under these circumstances that the suit had been filed seeking cancellation of the said



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partition deed and for declaration of title.

5.As stated the defendant took a conscious decision to remain *ex-parte*. The plaintiff was directed to tender evidence. She tendered evidence and marked the two sale deeds as Exs.P1 and P2, by which the property was purchased. The copy of the partition deed was marked as Ex.P3. The death certificates of her father and mother were marked as Exs.P6 and P8. The copies of her passport and birth certificate were marked as Exs.P7 and P10.

6.A perusal of the documents show that the father had purchased the property out of his own fund and therefore, it is held that he is the absolute owner of the property and being the absolute owner, the partition deed with his own brother, who had no right, title or interest has to be declared as *ab initio* void since it does not stand the scrutiny of this Court.

7.In view of these reasons, the suit is decreed, as prayed for.

No costs.

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Internet : Yes / No

Index : Yes / No



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List of Witness in C.S.No.75 of 2020

P.W.1 – Shanthi Christel

List of Exhibits:

1. Ex.P1 : Certified copy of the sale deed dated 21.07.1975.
2. Ex.P2 : Certified copy of the sale deed dated 21.07.1975.
3. Ex.P3 : Certified copy of the partition deed dated 27.07.1976.
4. Ex.P4 : Print out copy of Patta
5. Ex.P5 : The original EB card.
6. Ex.P6 : Photocopy of the death certificate dated 10.09.2003.
7. Ex.P7 : Photocopy of the passport dated 20.04.2012.
8. Ex.P8 : Photocopy of the death certificate of mother dated
23.11.2018.
9. Ex.P9 : Office copy of the letter dated 19.08.2019.
10. Ex.P10 : Photocopy of the birth certificate dated 18.12.1972.

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