

Form No. J(2)

In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side

Present: The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Uday Kumar

F.A. 56 of 2019
IA No: CAN 3 of 2022

Sri Kalipada Panda, since deceased, his substituted legal heirs
Smt. Laxmipriya Panda and others
Vs.
Smt. Parvati Panda and others

For the appellants : Mr. Sounak Bhattacharya
Mr. Sounak Mondal
Ms. Bipasha Bhattacharyya

Heard on : 28.10.2025

Judgment on : 28.10.2025

Sabyasachi Bhattacharyya, J.:-

1. CAN 3 of 2022 is allowed, thereby directing the name of opposite party no.1(b)-Amitava Panda, who has died in the meantime, to be expunged, since his heirs are already on record as parties to the appeal. The office shall carry out the necessary consequential corrections in the records at the earliest.
2. There will be no order as to costs.

3. Learned counsel for the appellants submits that although there were previous directions for service of notice, paper books, etc., the appeal can be disposed of on a short point.
4. Learned counsel, on instruction, submits that it is a fact that the partition suit filed by the appellants, from which the present appeal arises, was bad for partial partition and non-joinder of all the co-owners as parties to the suit.
5. Upon a thorough perusal of the impugned judgment, we find that the only grounds on which the partition suit of the appellants was dismissed was that it was bad for partial partition, since all the *ejmali* property of the co-sharers had not been brought in the common hotchpot and that the suit was bad for non-joinder of all co-sharers, who were necessary parties.
6. Such grounds are justified in law.
7. Thus, in any event, the present appeal does not have any merit.
8. Even otherwise, since the suit was only dismissed on the technical grounds of partial partition being not permitted and non-joinder of necessary parties, the dismissal of the suit cannot preclude the appellants from filing a fresh partition suit upon impleading all co-sharers and bringing within the hotchpot of the suit of all properties common to the co-sharers, more so since the cause of action for filing a partition suit is continuing in nature.

- 9.** Accordingly, F.A. 56 of 2019 is dismissed, thereby affirming the impugned judgment and decree dated April 21, 2018 passed by the learned Civil Judge, Senior Division, Second Court at Contai, District-Purba Medinipur in Title Suit No.56 of 2009, with the observation that nothing in this judgment and/or the impugned judgment and decree shall preclude the plaintiffs/appellants from bringing a fresh partition suit on the self-same cause of action by impleading all co-sharers as parties to the said suit and bringing within the hotchpot of the suit all the joint properties belonging to the co-sharers.
- 10.** There will be no order as to costs.
- 11.** A formal decree be drawn up accordingly.
- 12.** The trial court records be send down immediately.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Uday Kumar, J.)

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