

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

**The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Uday Kumar**

WPLRT No. 173 of 2024

**P. C. Chandra Financial Services Private Limited
Vs.
The State of West Bengal and others**

For the petitioner	:	Mr. Anindya Kumar Mitra, Ld. Sr. Adv., Mr. Subrata Kumar Basu, Ms. Sreya Basu Mallick, Mr. Ankit Dey, Mr. Satrajeet Sen, Mr. Atri Mandal
For the KMC	:	Mr. Biswajit Mukherjee, Ms. Gulnaz Quraishi
For the respondent nos. 6 to 8	:	Mr. Kallol Basu, Mr. Bratin Kumar Dey, Ms. Anjana Banerjee, Mr. Arin Chakraborty
For the respondent no.9	:	Ms. Debjani Sengupta, Ms. Paulomi Ghosh
Heard on	:	07.08.2025
Hearing concluded on	:	12.08.2025
Judgment on	:	21.08.2025

(Judgement is corrected vide Hon'ble Court's order dated 10.09.2025)

Sabyasachi Bhattacharyya, J.:-

1. The present writ petition arises out of a proceeding initiated on the application of one Arun Chandra Khanna (since deceased), in his capacity as a partner of a partnership firm namely M/s Khanna & Sons, for declaration that the disputed property is a Thika Tenancy Property and the said partnership firm is the Thika Tenant/Returnee. The Thika Controller refused such application by an order dated March 27, 2014, which was challenged by them by filing an Original Application before the West Bengal Land Reforms and Tenancy Tribunal. The First Bench of the Tribunal, by the impugned order dated July 26, 2024, allowed the application for substitution of heirs of Arun Chandra Khanna who died during the pendency of the appeal, against which the present writ petition has been preferred.
2. Learned senior counsel for the petitioner argues that the partnership firm being unregistered, the application was not maintainable in the first place. The present petitioner-Company's predecessor-in-interest purchased the property from one Satrugna Kanta Acharyya, the alleged exclusive owner of the disputed property, upon a partition having been affected between the co-owners of the same. It is argued that there were originally four partners of the firm, namely Prem Chandra Khanna, Mohan Chandra Khanna, Tarun Chandra Khanna and Arun Chandra Khanna. Prem Chandra Khanna had died earlier. Mohan Chandra Khanna and Tarun Chandra Khanna filed affidavits before the Thika

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Controller stating that M/s Khanna & Sons was not a Thika Tenant in respect of the disputed premises at any point of time.

3. Mohan Chandra Khanna also died on April 11, 2017, leaving behind Tarun Chandra Khanna, the respondent no.9, and Arun Chandra Khanna as the only partners of the said unregistered firm.
4. It is argued by learned senior counsel for the petitioner that the partnership firm has dissolved automatically on the demise of Arun Chandra Khanna, since only one partner, namely, Tarun Chandra Khanna survived and, in order to constitute a partnership, there has to be more than one partner.
5. Thus, the proceeding itself has abated before the Controller upon the demise of Arun Chandra Khanna and there is no scope of substitution of his heirs.
6. Learned senior counsel contends that in a proceeding instituted by a partnership firm, there cannot be any substitution of the heirs and legal representatives of one of the partners, in their personal capacity, on his demise, unless there is a specific clause in the partnership deed to such effect. Clause 5 of the partnership deed of the firm M/s Khanna & Sons specifically stipulates that on the death of any of the partners, discretion lay on the surviving partners to continue the firm by themselves or by taking the legal representative of the deceased partner as partners in the firm in his place or by taking a new partner. In the present case, since no such exercise was done in respect of the heirs of Arun Chandra Khanna by the sole surviving partner Tarun Chandra Khanna, it is

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argued that the respondent nos. 6 to 8, who were the substitution applicants, have no *locus standi* to be impleaded in the proceeding.

7. Learned senior counsel next contends that the Tribunal erroneously applied the exception under Section 69(3) of the Partnership Act, 1932 (hereinafter refer to as the “Partnership Act”), which has no application, since the proceeding is not for dissolution of the partnership firm.
8. Learned senior counsel argues that since the sole surviving partner Tarun Chandra Khanna has taken a specific stand that the disputed property is not a Thika Tenancy, the proceeding does not survive. It is further argued that the Tribunal, while deciding the substitution application, entered into the merits of the proceeding pending before the Thika Controller, which was palpably beyond its jurisdiction.
9. Learned senior counsel for the petitioner cites *Addanki Narayanappa and Another vs. Bhaskara Krishtappa and 13 Others* reported at AIR 1966 SC 1300 in support of the proposition that the right of a partner during the subsistence of the partnership is to get his share or profit from time to time, which right translates to a monetary claim upon disposal of the property of the firm on its dissolution. Where the partnership is entitled to immovable property, such share does include an interest in immovable property which, however, does not confer any right on the partners to the property of the firm.
10. Learned counsel appearing for the respondent nos. 6 to 8 controverts the arguments of the petitioner and contends that an unregistered firm is not debarred from filing a suit or a proceeding to enforce a statutory right, since Section 69 of the Partnership Act merely debars a legal
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action to enforce contractual rights against third parties. The right to file a suit for eviction, for example, is not a contractual right and can very well be enforced by an unregistered partnership firm. A partnership, it is argued, is merely a collection of its partners. A firm has no legal entity and collectively defines its partners. As per Section 4 of the Partnership Act, “partnership is the relation between persons who have agreed to share profits of the business carried on by all or any of them acting for all”. The persons who have entered into a partnership with one another are all individual “partners” and collectively “a firm” and the name under which their business is carried on is called the “firm name”. Thus, a partnership is different from an incorporated company.

11. As such, it is argued that the heirs of late Arun Chandra Khanna, one of the partners, have full right to protect the interest of the partnership firm. In support of such contention, learned counsel cites *Padam Singh Jain vs. M/s Chandra Brothers and Others* reported at AIR 1990 PAT 95 as well as *Shiv Developers vs. Aksharay Developers and Others* reported at (2022) 13 SCC 772. In support of the contention that an unregistered firm can maintain a suit to enforce a statutory right, learned counsel cites *Haldiram Bhujiawal and Another vs. Anand Kumar Deepak Kumar and Another* reported at (2000) 3 SCC 250.
12. Upon consideration of the argument of the parties, this Court comes to the following **CONCLUSIONS**:

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(i) Whether the present proceeding is maintainable at the behest of an unregistered firm.

13. Section 69 of the Partnership Act provides the effect of the non-registration of a firm. M/s Khanna & Sons, the applicant before the Controller in the present case, is admittedly not a registered firm, although the partnership deed is registered.
14. The bar under sub-section (1) of Section 69 of the Partnership Act pertains to suits instituted by or on behalf of any persons suing as a partner in a firm against the firm or any person alleged to be or have been a partner in the firm.
15. Thus, it contemplates disputes *inter se* partners and the firm and is not attracted in the present case, since the dispute here is between the writ petitioner, a third party claiming to be the owner of the property, and respondent nos. 6 to 8, who claim through one of the partners.
16. Thus, the present dispute is governed by Section 69(2) of the Partnership Act, which stipulates that no suit to enforce a right “arising from a contract” shall be instituted in any court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the register of firms as partners in the firm. At the outset, it is clear that the present dispute arises out of an application filed before the Thika Controller wherein the unregistered partnership firms assert its Thika Tenancy rights in respect of the disputed property. Such rights arise out of and are governed by the West Bengal Thika Tenancy (Acquisition and Regulation) Act 2001, (hereinafter referred to as the “Thika Tenancy Act”).

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17. Section 2(14) of the Act defines a “Thika Tenant” and Section 2(15), “Thika land”. The incidents of a thika tenancy arise out of and are governed by the said statute. Thus, the rights of the parties in respect of creation of Thika Tenancy arise out the Thika Tenancy Act and not from any other statute or from any contract between the parties. The rights asserted in the proceeding by the firm flow from statute and thus, such a proceeding is not debarred under Section 69(2) of the Partnership Act, which only imposes a restriction with regard to the legal action by an unregistered firm in the event the proceeding is to enforce a right “arising from a contract”, and not a statutory right. Hence, this issue is decided in favour of the respondent nos. 6 to 8 and against the writ petitioner, since the proceeding is very much maintainable at the behest of an unregistered firm before the Thika Controller to declare its Thika Tenancy. The proposition laid down in *Shiv Developers*¹ (*supra*) and *Haldiram Bhujawala*² (*supra*) strengthens the above view.

(ii) Whether respondent nos. 6 to 8 have any locus standi to be substituted in the proceedings before the Thika Controller.

18. In order to ascertain whether the heirs to one of the original partners of M/s Khanna & Sons automatically have a right to be inducted as partners and sue on behalf of the partnership firm, we have to look first at the relevant provision of the partnership deed itself.

¹ *Shiv Developers vs. Aksharay Developers and Others* reported at (2022) 13 SCC 772

² *Haldiram Bhujawala and Another vs. Anand Kumar Deepak Kumar and Another* reported at (2000) 3 SCC 250

19. The partnership deed dated August, 22, 1974 is germane in the context, since M/s Khanna & Sons was formed by the said deed. Clause 4 of the same stipulates that the partnership shall continue till the lifetime of the partners unless previously determined by mutual consent and agreement between them.

20. Clause 5, however, is the relevant provision and is quoted herein below:

“Clause 5: *That on the death of any of the partners hereof during the continuance of the present partnership business the surviving partners are entitled to continue the business of the firm either by themselves or by taking the legal representative of the deceased partner as a partner in his place or by taking a new partner in his place as the existing partners will think best.”*

21. A bare perusal of the above clause shows that induction of the heirs of a deceased partner as partners in the firm is not an automatic process. On the demise of one of the partners, it is entirely left to the discretion of the existing partner(s) as to whether he/they will continue the business of the firm by himself/themselves or by taking the legal representatives of the deceased partner as partners. The surviving partner also has the discretion to take new partners in place of the deceased, by totally shutting out the heirs of the deceased partner. Hence, it is self-evident from the clause that automatic induction of the heirs of a deceased partner, as partners, is not contemplated in the partnership deed.

22. In the present case, not only has the sole surviving partner, Tarun Kumar Khanna, categorically denied that the partnership firm is a Thika Tenant, there is not an *iota* of pleading or evidence to show that he ever

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inducted the respondent nos. 6 to 8, the heirs of the deceased partner Arun Chandra Khanna, as partners to the firm. Thus, the respondent nos. 6 to 8 evidently do not have the right or *locus standi* at all to be substituted in place and stead of their father, Late Arun Chandra Khanna after his death, to represent the firm, which is the returnee and claims to be a Thika tenant.

23. Another aspect of the matter cannot be overlooked. On the demise of the last surviving partner apart from Tarun Chandra Khanna, namely Arun Chandra Khanna, the numbers of the partners have come down to one, being Tarun Chandra Khanna. By definition, to constitute a partnership firm, there has to be at least more than one partner. Hence, on the demise of Late Arun Chandra Khanna and in the absence of any intention being expressed by Tarun Chandra Khanna to continue the business by inducting the legal representatives of Late Arun Chandra Khanna as partners, the partnership itself automatically dissolves. Hence, there is no scope of the right to sue of Arun Chandra Khanna, in the capacity of a partner, surviving on his heirs.

24. A perusal of the parent application before the Thika Tenancy Controller shows that Late Arun Chandra Khanna was the applicant before the Controller and he mentioned categorically that the Returnee/Thika Tenant was the partnership firm, namely, M/s Khanna & Sons, represented by its partners.

25. The very basis of the case of Arun Chandra Khanna, who was an admitted partner of M/s Khanna & Sons, was that the Thika Tenancy right vested in the partnership firm. Thus, on his demise, as discussed
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above, it cannot be argued by his heirs that Arun Chandra Khanna applied in his individual capacity.

- 26.** In *Addanki Narayanappa*³ (*supra*), the Supreme Court categorically observed that the whole concept of partnership is to embark upon a joint venture and for that purpose to bring in as capital money or even property, including immovable property. Once that is done, whatever is brought in would cease to be the trading asset of the persons who brought it in. It would be the trading asset of the partnership, in which all the partners would have interest in proportion to their share in the joint venture of the business of partnership. A partner's right during the subsistence of the partnership is to get his share of profits from time to time as may be agreed upon, and after the dissolution of the partnership or with his retirement from partnership, of the value of his share in the net partnership assets as on the date of dissolution or retirement, after a deduction of liabilities and prior charges.
- 27.** The court considered the proposition that on the death of a partner, his share in the partnership property is to be treated as money, not as land.
- 28.** The debts and liabilities of the partners may be met out of the firm's property and thereafter the assets should be applied for rateable payment to each partner of what is due to him firstly on account of advances and secondly on account of capital. The Partnership Act, it was held, contemplates the liquidation of the assets of the partnership as a preliminary to the settlement of accounts between the partners.

³ ***Addanki Narayanappa and Another vs. Bhaskara Krishtappa and 13 Others***
reported at AIR 1966 SC 1300

- 29.** Thus, although the firm name is a short form of the partners themselves, the partners *per se* do not have a right to the asset of the partnership firm.
- 30.** Learned counsel for the respondent nos. 6 to 8 seeks to rely on paragraph 5 of *Addanki Narayanappa*⁴ (*supra*) to argue that where land or any heritable interest has become partnership property it shall, unless the contrary intention appears, be treated as between partners (including the representative of the deceased partners) as also between the heirs of deceased partner and his executor or administrators, as personal or movable and not real, or heritable, estate. However, in the said paragraph, Section 22 of the English Act was being considered which was distinguished in the subsequent paragraphs by the Supreme Court.
- 31.** Moving on to *Padam Singh Jain*⁵ (*supra*), with utmost respect to the erudition of the learned Single Judge of the Patna High Court who rendered the judgment, the concept that a partnership firm is merely the joint name of the individual partners themselves does not automatically translate to the proposition that the partners are the owners of the properties of the firm. Apart from the said judgment going against the grain of *Addanki Narayanappa* (*supra*), the learned Single Judge was considering Order XXX Rule 1 of the Code of Civil Procedure. Order XXX merely permits the partners to sue in the name of the firm. While explaining the said concept, the learned Single Judge of the Patna High

⁴ ***Addanki Narayanappa and Another vs. Bhaskara Krishtappa and 13 Others* reported at AIR 1966 SC 1300**

⁵ ***Padam Singh Jain vs. M/s Chandra Brothers and Others* reported at AIR 1990 PAT 95**

Court elaborated the legal fiction of a partnership firm name being merely the short form of the individual partners' collective entity.

- 32.** There is no doubt on the said proposition. However, it does not mean that every individual partner is a co-sharer of the property belonging to the partnership firm. *Padam Singh Jain's judgment*, if taken to its hilt, would have to be interpreted to mean that the partnership firm cannot hold any property in its own name at all, which is contrary to Section 14 of the Partnership Act. Although a partnership firm itself is not a juristic entity akin to an incorporated company, it is the joint name under which the partners may sue as well as hold property.
- 33.** In the present case, it is of extreme relevance that the application before the Thika Controller was filed claiming that the partnership firm, and not the individual partners in their personal capacity, is a Thika Tenant. Thus, if it is argued by respondent nos. 6 to 8 that the partnership firm cannot hold a property but its assets belong to the individual partners, the very basis of the claim of Thika tenancy of the partnership firm would get diluted and the arguments of the partners would then be rendered mutually destructive.
- 34.** Hence, on a collective reading of the judgments cited by both parties and the provisions of the relevant statutes, this Court is of the clear opinion that the scope of the application before the Thika Controller is to decide whether M/s. Khanna & Sons, a partnership firm, is a Thika Tenant in respect of the property and the entire focal point of the consideration, even in a substitution application, has to be that the partnership firm claims a right to sue in its own capacity.

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- 35.** As we have already discussed above that the heirs and legal representative of Arun Chandra Khanna, one of the deceased partners, do not automatically become partners of the firm within the contemplation of the partnership deed itself, and since the partners have not claimed a Thika Tenancy in their individual capacity before the Controller and the tenancy granted stood in the name of the firm, there cannot arise any question of the heirs and legal representative of the deceased partner to be impleaded by construing the deceased partner to have sued in his personal capacity.
- 36.** In such view of the matter, there is no substance in the contention of respondent nos. 6 to 8 that they have *locus standi* to be impleaded in place and stead of the deceased partner Arun Chandra Khanna in the proceeding before the Tribunal.
- 37.** The learned Tribunal, unfortunately, lost sight of the above relevant aspects of the matter and merely proceeded on the erroneous premise that, as heirs of the deceased partner Arun Chandra Khanna, respondent nos. 6 to 8 automatically have a right to be impleaded.
- 38.** Rather, the judgment of the Thika Controller was much more reasoned and adverted to the correct legal propositions relevant to the present case.
- 39.** Accordingly, WPLRT No. 173 of 2024 is allowed on contest, thereby setting aside the impugned judgment dated July 26, 2024 whereby the substitution application filed by the respondent nos. 6 to 8 was allowed. It is hereby held that on the demise of Arun Chandra Khanna, one of the partners of M/s. Khanna & Sons, the right to sue does not survive on the
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heirs of Late Arun Chandra Khanna and since Tarun Chandra Khanna, the sole surviving partner, is arrayed as an opposite party and has taken a specific stand that the partnership firm was not a Thika Tenant, as well as since the partnership firm itself has dissolved on the demise of Arun Chandra Khanna, since the number of partners has come down to one, OA no. 1433 of 2014 has abated.

- 40.** There will be no order as to costs.
- 41.** Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Uday Kumar, J.)