

Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present : The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
&
The Hon'ble Mr. Justice Supratim Bhattacharya

FA No. 45 of 2026
+
CAN 1 of 2026

Smt. Suchitra Mondal
-VS-
Sri Subir Ghosh and others

For the appellant : Mr. Saptarshi Kumar Kundu, Adv.

For the respondent no. 1 : Mr. Pappu Adhikari, Adv.

Heard on : June 29, 2026.

Judgment on : June 29, 2026.

Sabyasachi Bhattacharyya, J.:

1. In view of the issues involved in the appeal as well as in the injunction application being similar, we take up the appeal itself for hearing on the papers before us.

2. Learned counsel appearing for the appellant submits that the learned trial Judge was pleased, by the impugned judgment and decree, to pass a preliminary decree of partition in the teeth of the fact that an application for grant of probate in respect of a Will covering the self-same property had been filed in the meantime by the appellant.
3. Although it is candidly submitted by learned counsel for the appellant that the said probate application stood dismissed for default when the preliminary decree was passed; nonetheless, an application for restoration of the probate proceeding is still pending.
4. Learned counsel for the respondents, on the other hand, submits that the probate application was filed in respect of a Will, purportedly of the year 2004, only in 2017, during pendency of the partition suit, which was instituted in the year 2014.
5. Before the impugned preliminary decree was passed, however, the probate application stood dismissed for default in the year 2002. Thereafter, a restoration application was filed in respect of the probate proceeding, which is still pending.

6. Upon hearing learned counsel for the parties, we find that not only was the probate application filed after the institution of the partition suit, the same stood dismissed for default as on the date when the impugned preliminary decree of partition was passed.
7. Since till date the probate proceeding has not been restored to its original file and number, we do not find any illegality in the trial court passing a preliminary decree by taking up the suit for hearing, since there was no probate proceeding pending in the eye of law during the relevant period. It is not the law that even if the probate application pertains to the self-same subject property, a partition suit will be stalled indefinitely despite the probate application having stood dismissed for default at the relevant point of time.
8. Thus, the appeal fails.
9. Accordingly, FA No. 45 of 2026 is dismissed on contest, thereby affirming the impugned judgment and decree dated August 30, 2025 passed by the learned Civil Judge (Senior Division), Ranaghat, District - Nadia in Title Suit No. 44 of 2014.
10. Consequentially, CAN 1 of 2026 is dismissed as well.

11. Interim order, if any, stands vacated.
12. We, however, make it clear that in the event (if at all) the probate proceeding is restored and probate is ultimately granted in favour of the appellant, it will be open for the appellant to take consequential steps in accordance with law with regard to the partition suit and/or any final decree, if passed therein in the meantime.
13. There will be no order as to costs.
14. A formal decree be drawn up accordingly.

I agree.

(Sabyasachi Bhattacharyya, J.)

(Supratim Bhattacharya, J.)