

Form No. J(2)

In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present: The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Biswaroop Chowdhury

FA 63 of 2026
IA No: CAN 1 of 2026

Tapati Mukherjee
Vs.
Pritam Kundu and another

For the appellant	:	Mr. Probal Mukherjee, Snr. Adv., Ms. Sayani Roy Chowdhury, Ms. Biswadeepa Mondal
For the respondents	:	Mr. Swarnendu Ghosh, Snr. Adv., Mr. Debdut Mukherjee, Mr. Soumyadeb Sinha, Ms. Vidhi Birmecha
Heard on	:	11.05.2026
Judgment on	:	11.05.2026

Sabyasachi Bhattacharyya, J.:-

1. In view of the short questions involved, we take up the appeal along with the application for hearing.
2. The present challenge has been preferred against a preliminary decree passed in a partition suit.

3. The partition suit was filed by the heirs of one of the daughters of late Satya Kumar Chatterji, the only son of late Harisadhan Chatterji, who the original owner of the suit property and left behind him a last Will and testament bequeathing the suit property to Satya Kumar Chatterjee and, after him, his heirs.
4. Learned senior counsel appearing for the defendant/appellant, who is also one of the daughters of late Satya Kumar Chatterji, argues that in terms of the Will, letters of administration in respect of which was granted at the behest of the appellant herself, there were other legal heirs of the testator late Harisadhan Chatterji who are entitled to the joint suit property. However, in view of such heirs having been left out, the suit was bad for non-joinder of necessary parties.
5. Learned senior counsel takes the Court through the last Will and testament of late Harisadhan Chatterji, executed in the year 1955, in support of his contentions.
6. Learned senior counsel next argues that the relief of accounts in respect of the subject property is implicit in a partition suit. However, despite the defendant/appellant having specifically pleaded in her written statement as regards the expenditure incurred by her for maintenance and upkeep of the suit property, the preliminary decree impugned herein did not include any provision for the same.
7. As such, it is contended that the preliminary decree ought to be set aside and the suit to be dismissed on the ground of non-joinder of necessary parties.

8. Learned senior counsel appearing for the plaintiffs/respondents, on the other hand, contends that in the application for letters of administration in respect of the Will of late Harisadhan Chatterji, the defendant/appellant herself categorically admitted that Satya Kumar Chatterji, the deceased son of the testator, left behind as his only heirs Tapati, Prabir and Pritam, that is, the parties to the present partition suit.
9. It is contended that in the said letters of administration proceeding itself, the defendant/appellant further admitted that the sons of the two daughters of the testator (Sarashi Bala and Pratima), namely, Raghunath and Debashish, were to enjoy the first floor of the subject premises No. 65, Hindusthan Park or usufructs thereof until they reached the age of 35 and also that at the time of filing of the letters of administration application, they had actually crossed the said age.
10. Learned senior counsel further takes the Court through the admission of the defendant/appellant in her evidence that all the persons in whose favour life interest was created by the Will of Harisadhan Chatterji are now deceased.
11. Learned senior counsel places reliance on the relevant clauses of the Will and submits that all other interests than the bequest in favour of the present parties were in the nature of life interests and they were extinguished with the demise of the said respective life interest holders.
12. With regard the argument of the appellant that the expenditure incurred by her was not given due credence by the learned Trial

Judge, learned senior counsel for the plaintiffs/respondents points out from the examination-in-chief of D.W.1, sole witness of the defendant/appellant, that not an iota of evidence was adduced in support of the claim of expenditure having been incurred by the appellant for the suit property. It is submitted that thus, in the absence of any such proof, the non-framing of any issue on such count and non-adjudication thereon cannot be faulted.

13. Upon a consideration of the materials before us, we find substance in the arguments of the plaintiffs/respondents.
14. The contents of the last Will and Testament of late Harisadhan Chatterji acquire relevance in the context and are enumerated hereinbelow:

"I, Harisadhan Chatterji, Son of late Nilmony Chatterji Brahmin by caste, Service holder by occupation, resident of Mazilpur, P.S. Joynagar, now residing in my own premises at 65, Hindusthan Park, P.S. Ballygunge, make this my Last Will and testament made on this day the 22nd. of May, in the year 1955 and I hereby cancel my previous Will or Wills. The Provisions of this my Last Will shall become operative on my death.

I have at present my wife Sm. Rijan Bala Debi and an only son Sriman Satya Kumar Chatterji, his wife (my daughter in law) Smt. Bela Chatterji and their only child a daughter (my grand-daughter) Sm. Tapati Chatterji and my two daughters namely Sm. Sarashi Bala Debi and Sm. Pratima Roy. My eldest daughter Sm. Sarashi Bala Debi has been married to Dr. Narayan Chandra Banerji of 183, Lansdowne Road, and they have got a only Son Sriman Raghunath Banerji. My youngest daughter has been married to Sriman Santiram Roy, resident

of Midnapur Town now in Railway Service and they have also got an only Sri Debashish Roy.

I hereby provide that on my death, all my properties both moveable and immoveables shall vest in my wife Sm. Bijan Bala Devi for life if she survives me and on her death the 1st. floor portion of my premises No. 65, Hindusthan Park shall devolve on my two daughters named above in equal shares for their lives and on the death of my daughters or any one of them their or or her respective son named above who will enjoy the said portion of premises No. 65, Hindusthan Park or usufruct thereof until they reach the age of 35 (thirty five) years subject to incharge for payment of an annual sum of Rupees 150/- (One hundred fifty) towards Deb Sheva of Family deities Sri Sri Lakmi Janardhan and Sri Sri Baneswar Shiv installed now being worshiped in my native place in Majilpur as provided for hereafter. The remaining portion of my said premises No. 65, Hindusthan Park and all other properties shall on the death of my wife Vest in my said son for life and on his death his heirs in absolute right subject to similar charge for payment of an annual sum of Rs. 150/- for payment towards worship Dev Seva of the deities mentioned above. There are Debottor properties of the said deities who are being worshiped according to special customs and arrangements made for the purpose and the said sum payable by respective legatees out of the said premises No. 65, Hindusthan Park shall augment the said Debottor Income. I have three other brothers and their sons. They will not in any way inherit my property. I am this day in the hearty health and I sign this Will in the presence of the Witnesses:-

Witnesses: -

1.. Kanai Lal Dutta,

Advocate,

6A, Lansdowne Terrace,

Calcutta – 26.

22nd May 1955

Sd. Harisadhan Chatterji

*2.. Jatindra Narayn Roy,
 Advocate,
 10, Lansdowne Terrace,
 Calcutta-26
 22nd May 1955”*

15. From the above, it is evident that all the interim bequests prior to the residuary legacy, whereby the remaining portion of the premises (apart from first floor) “and all other properties” (obviously including the first floor) were, on the death of the wife of the deceased testator, to vest in his son for life (namely Satya Kumar Chatterji) and on his death his heirs in absolute right (subject only to the charge for payment of an annual sum of Rs. 150/- towards worship of Dev Seva of the deities mentioned thereinabove) were of the nature of life interest, to be extinguished with the demise of the respective life interest holders.
16. Thus, apart from the minimal encumbrance of an annual sum of Rs.150/- towards worship of the deities, the ultimate bequest of the subject property was made in favour of the son of the testator namely Satya Kumar Chatterji and, on his demise, to his heirs (being the parties to the present partition suit only).
17. The interim legacies were all in the nature of life interests and as such, in view of the admission of the defendant/appellant herself in the letters of administration proceeding that the sons of the two daughters of the deceased testator had already reached 35 years of age, coupled with her admission in the evidence in the present suit

that all the life interest holders had died, there cannot be any manner of doubt that apart from the parties to the present partition suit, who are the heirs and legal representatives of late Satya Kumar Chatterji, the son of the testator, there are no other legatees entitled to the estate of the deceased original absolute owner/testator in terms of the last Will and testament of the said testator, namely late Harisadhan Chatterji.

18. Thus, the objection of the defendant/appellant on the ground of purported non-joinder of necessary parties has no limb to stand upon.
19. Insofar as the ground of the expenditure purportedly incurred by the appellant in respect of the suit building is concerned, we do not find an iota of evidence, as rightly contended by the respondents, in support of such contention having been adduced by the sole witness of the defendant/appellant in the suit.
20. In the absence of the same, this Court does not find any illegality, either in law or in fact, in the Trial Court having not given any credit to such non-existent expenditure incurred by the defendant/appellant or directing accounts to be furnished.
21. Accordingly, we find that the learned Trial Judge was justified in passing the impugned judgment and preliminary decree, thereby declaring the respective shares of the parties to the suit.
22. Hence, FA 63 of 2026 is dismissed on contest, thereby affirming the impugned judgment and preliminary decree dated November 28, 2025 passed by the learned Civil Judge (Senior Division), Tenth Court at Alipore, District: South 24 Parganas in Title Suit No. 702 of 2018.

23. CAN 1 of 2026 is accordingly disposed of as well.
24. There will be no order as to costs.
25. A formal decree be drawn up accordingly.
26. It is expected that the learned Trial Judge shall endeavour to dispose of the suit as expeditiously as the business of the Court permits, preferably by September 30, 2026.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Biswaroop Chowdhury, J.)