

09.02.2026
Court No.13
Item No.10
pk

FAT 172 of 2016
With
CAN 1 of 2016 (Old No: CAN 3862 of 2016)
With
CAN 2 of 2023, CAN 3 of 2023, CAN 4 of 2025, CAN 5
of 2025

Kashinath Ghosh
Vs.
Smt. Jayabati Ghosh & Ors.

Mr. Kajal Ray,
Mr. Suman Nandi

..for the appellants.

Mr. Syamal Kumar Das,
Ms. Smita Pal

..For the respondents.

1. CAN 3 of 2023 is an application for condonation of delay in filing CAN 4 of 2025. Several grounds are available to explain the delay. The delay is condoned.

2. CAN 3 is allowed.

3. CAN 4 of 2025 is an application for expunging the name of the respondent no. 1, Jayabati Ghosh, who died on 18.12.2024. The legal heirs of Jayabati Ghosh are already on record in the trial court.

4. Let the name of Jayabati Ghosh be expunged from the records of the instant appeal and that of the trial court.

5. CAN 4 of 2025 is disposed of.

6. CAN 5 of 2025 is an application for recording the death of the respondent no. 3, Sri Biswanath Ghosh. He

has no issue. His legal heirs are, therefore, already on record.

7. Let the name of the respondent no. 3, Sri Biswanath Ghosh stands struck off from the records of the instant appeal and that of the trial court.

8. The abatement of the appeal consequent of death of the respondent nos. 1 and 3 shall stand set aside.

9. CAN 5 of 2025 is disposed of.

Re: FAT 172 of 2016

10. The instant appeal is directed against the judgment and order dated 29.01.2016 passed by the learned Civil Judge (Senior Division), Hooghly at Chinsurah. The suit was one for partition. The appellant was a plaintiff. The respondents are his mother, younger brothers and younger brother's wife. The properties allegedly belonging to the deceased father, Panchu Gopal Ghosh, according to the plaintiff, comprised in two landed properties mentioned more fully described in schedule "ka" and schedule "Kha" to the plaint. The plaintiff received under the partition decree $\frac{1}{4}$ share in "ka" schedule property. Insofar as "Kha" schedule property is concerned, it is admitted that the same is standing in the name of the respondent no. 1, mother, Jayabati Ghosh.

11. The plaintiff had stated that the said property was actually purchased by their father, Panchu Gopal Ghosh in the name of Jayabati Ghosh, wife. The said property is therefore paritable. Jayabati Ghosh could not have gifted

any part of the portion of the said property to the second son or his wife.

12. In course of trial, the appellant as well as the respondent younger son alleged that the mother was kidnapped by both the sons at different times and gift deeds were executed of the “Kha” schedule property in favour of the sons separately.

13. It was also come on record that the respondent Jababati Ghosh purchased the land out of funds generated by selling milk of cattle at home.

14. What appears to have been missed out by the trial court as well as the parties that Section 3(2) of the Benami Transaction (Prohibition) Act 1988 prohibits any actual payor of the sale consideration from asserting any right in respect of the property purchased in the name of a relative wife, daughter or sons. Even otherwise the recorded title holder at property can always assert exclusive title to the same.

15. Having regard to the above and evidence on record, this Court is of the view that the trial judge did not commit any mistake in holding that the appellant is only entitled to $\frac{1}{4}$ share in “Ka” schedule property. The other share holders being the mother Jayabati Ghosh, younger brothers Sri Siddheswar Ghosh and Biswanath Ghosh and daughter in law Smt. Sulata Ghosh. “Kha” schedule property has already been gifted to Siddheswar Ghosh

and Sulata Ghosh. The matter needs to be put to rest once in for all and is hereby confirmed.

16. The preliminary decree dated 29.01.2016 passed by the trial court calls for no interference.

17. It is submitted that the Commissioner of partition has been appointed and has also submitted his final report. The parties shall be at liberty to file objection to such report and lead evidence as they may deem, fit and proper. The impugned preliminary decree dated 29.01.2016 is confirmed.

18. It is requested that the trial judge pronounce final decree as expeditiously as possible preferably within six months from date. No unnecessary adjournment will be allowed to any of the parties.

19. With the aforesaid observations, the instant appeal is disposed of. Consequently all connected pending applications, if any, are also disposed of.

20. There will be no order as to costs

21. All parties shall act on the server copy of this order and duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)