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 Sandip Kumar De

FAT No. 201 of 2025
+
CAN 1 of 2025

Kashinath Karmakar and another
Vs.
Joynagar Patha Bhavan and others

For the appellants : Mr. Sounak Bhattacharya,
Mr. Sounak Mandal,
Mr. Abhirup Haldar,
Ms. Bipasha Bhattacharyya, Advs.

For the respondent nos. 1 to 4. : Mr. Piyush Chaturvedi, Sr. Adv.,
Mr. Chittapriya Ghosh,
Mr. Asit Baran Ghosh,
Mr. Somesh Kumar Ghosh,
Ms. Priyanka Saha,
Mr. Komal Singh,
Mr. Suman Mukherjee, Advs.

Heard on : 05.10.2026.

Judgment on : 05.10.2026.

Sabyasachi Bhattacharyya, J.:-

1. The affidavit-of-service filed today be kept on record.

2. We find therefrom that the respondent no. 5 has been duly served. Although the respondent no. 6 could not be served directly, the learned Advocate who appeared for the said respondent in the trial court has accepted service.

3. Accordingly, we take up the appeal for hearing along with the application by deeming service to have been effected on all the respondents.

4. The present appeal has been preferred against the dismissal of a suit for declaration of title in respect of schedule “A” building, alternatively for partition of the schedule “B” property, primarily comprised of a land, on the ground of maintainability.

5. Learned counsel for the appellants argues that although initially the learned Trial Judge had observed that vide order dated July 13, 2022 passed in the suit that the issue of maintainability would be taken up after full-fledged trial, subsequently, of its own, the Trial Court took up the issue of maintainability and without properly hearing parties, decided the same conclusively even before evidence commenced.

6. Secondly, it is submitted that an earlier suit had been filed by one of the defendants in the present suit, for partition of the land which is the situs on which the school building (comprised in schedule “A” of the present suit) is situated.

7. In an appeal preferred against an interlocutory order arising out of the earlier suit, a co-ordinate Bench had dismissed the appeal by holding that the school is not the subject matter of the said earlier partition suit, for which it was made clear that the court had not gone into the merits of the contentions of the respective parties regarding requirement of receiver over the suit property.

8. In the said judgment, it was categorically observed further that the school building was not a part of the earlier suit.

9. Learned counsel for the appellants argues that the present suit as framed is perfectly maintainable since the suit property has been segregated between schedules “A” and “B”, the former comprised of the school and the building housing the same, whereas the latter is related to the land on which the school building is situated.

10. In respect of the schedule “A” property, the plaintiffs/appellants have claimed exclusive title; whereas in respect of the schedule “B” property, the plaintiffs have admitted that the defendants/respondents are co-sharers and have sought partition.

11. Learned senior counsel appearing for the defendants/respondent nos. 1 to 4 argues that the appellants not only participated in the earlier suit, which is still pending, but transposed themselves to the category of plaintiffs therein.

12. As such, whatever reliefs have been sought in the present suit could very well have been claimed in the earlier suit.

13. Learned senior counsel insinuates that the present suit, thus, is barred by the principle of Order II Rule 2 of the Code of Civil Procedure.

14. It is further submitted that since the land on which the school building is situated is already the subject matter of the earlier suit, which is still pending, with the appellants as the plaintiffs, the second suit is not maintainable at all by segregating artificially the building standing thereon.

15. Lastly, learned senior counsel submits that in the event this Court is not satisfied with the legality of the impugned judgment, both the suits be directed to be heard analogously / together.

16. Upon a consideration of the arguments of the parties as well as the materials on record, we find substance in the contentions of the appellants.

17. By the very frame of the current suit, the school and the building in which the same is situated have been segregated from the land on which the same is built.

18. Regarding the first, the same has been incorporated in schedule “A”, in respect of which the plaintiffs/appellants have claimed absolute ownership, thus, precluding any scope of incorporating the said property within the hotchpot of the earlier suit, which is a suit for partition and, therefore, presupposes that the subject matter of the same has to be jointly owned by the parties.

19. In view of the plaintiffs/appellants having claimed exclusive ownership of the school and the building in which the same is situated, having allegedly been built by the plaintiffs/appellants exclusively, the same could not have been brought within the hotchpot of the earlier suit, which is a suit for partition and comprises of only the joint properties of the parties.

20. Even otherwise, the learned Trial Judge proceeded on the premise that unless the co-ownership is admitted, a suit for partition is not maintainable.

21. Such logic, however, is defeated by the averments made in paragraph nos. 9 and 10 as well as otherwise in the plaint of the current suit, where the co-ownership of the defendants/respondents in respect of

the schedule “B” property has been admitted and alternatively, partition has been sought in respect of the schedule “B” property.

22. Thus, we do not find that the current suit is barred by Order II Rule 2 of the Code of Civil Procedure and/or otherwise.

23. Accordingly, the learned Trial Judge erred in law and in fact in holding that the present suit is not maintainable.

24. In view of the above conclusions, the other question raised by the appellants need not be gone into, although we are also satisfied with the appellants’ argument on the said point, since the learned Trial Judge, after relegating the issue of maintainability post-trial, ought not to have taken up the said issue and decided the same conclusively prior to commencement of trial on evidence.

25. In view of the above, FAT No. 201 of 2025 is allowed on contest, thereby setting aside the impugned judgment and decree dated February 18, 2025 passed by the learned Civil Judge (Senior Division), First Court. Howrah, in Title Suit No. 389 of 2016, with the observation that the said suit is maintainable. The suit is remanded to the Trial Court for adjudication on merits.

26. The learned Trial Judge shall now proceed to dispose of the said suit on merits, independently and in accordance with law, upon trial on evidence.

27. It is made clear that it will be open for the learned Trial Judge to consider whether the two suits indicated above, being Title Suit No. 389 of 2016 and Title Suit No. 9 of 2014, both pending before the said court, should be taken up for hearing together / analogously.

28. In the event an application is made by either of the parties in that regard, the learned Trial Judge shall decide the same in accordance with law.

29. CAN 1 of 2025 is consequentially disposed of as well.

30. There will be no order as to costs.

31. Urgent Photostat certified copies of this judgment, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Sandip Kumar De, J.)