

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 Supratim Bhattacharya

F.A. 331 of 2025
IA No: CAN 1 of 2025

Dilip Tewari and others
Vs.
Lab Ghosh and others

For the appellants	:	Mr. Sagnik Chatterjee Mr. Sayan Mukherjee
For the respondent nos. 1 to 13	:	Mr. Prasanta Bishal Mr. Md. Jannat Ul Firdous
For the respondent nos. 14 to 19	:	Mr. Dyutiman Banerjee
Heard on	:	20.01.2026 & 16.02.2026
Judgment on	:	16.02.2026

Sabyasachi Bhattacharyya, J.:-

1. Affidavit-of-service filed in court today be kept on record.
2. Substantial service has been effected on all the respondents.
3. In fact, respondent nos.1 to 13 and respondent nos.14 to 19 are represented by their respective counsel.

4. Since respondent no. 20, the State of West Bengal, was merely a proper (as opposed to necessary) party to the suit, we dispense with service of the appeal on the said respondent.
5. In view of the short conspectus of the appeal, we take up the same for hearing along with the injunction application.
6. As the court has not directed affidavits to be filed, it is deemed that none of the allegations made in the injunction application are admitted by the respondents.
7. The present appeal arises out of the dismissal of a partition suit filed by the plaintiffs/appellants.
8. The plaintiffs' case was based on their title.
9. A previous suit for declaration of title and consequential reliefs, filed between the original co-owners of the subject property, culminated in a decree whereby the shares of the respective co-owners were declared.
10. As per the said decree, the shares of each of the seven co-sharers were declared to be $1/7^{\text{th}}$ of the suit property.
11. As per the plaintiffs/appellants, which stand is agreed upon by respondent nos. 14 to 19, subsequent to the passing of the decree in the previous suit, two of the co-owners died.
12. Therefore, the shares of the co-owners were automatically converted to $1/5^{\text{th}}$ each.

- 13.** The respondent nos. 1 to 13, on the other hand, claim to have purchased a share in the property from one of the original co-sharers.
- 14.** Learned counsel for the respondent nos. 1 to 13 contends that no notice/summons of the earlier suit was served on their predecessor-in-interest.
- 15.** However, we are unable to accept such contention at the behest of the respondent nos. 1 to 13, who, being subsequent purchasers from one of the parties to the earlier partition suit, cannot claim a right greater than their vendor.
- 16.** Since the vendor of the respondent nos. 1 to 13, who was one of the co-sharers and a party to the earlier partition suit, did not raise the issue either by way of a challenge in appeal or an application under Order IX Rule 13 of the Code of Civil Procedure to the effect that no summons of the earlier suit was served on him, the present respondent nos. 1 to 13, claiming through such co-owner, cannot reopen the said issue.
- 17.** By operation of the principle of *res judicata*, the vendor of the respondent nos. 1 to 13 as well as the respondent nos. 1 to 13 are bound by the earlier decree and the declaration of shares of parties therein.
- 18.** The learned Trial Judge, by the impugned judgment and decree, dismissed the suit merely on the finding that the claim of the

plaintiffs was apparently contradictory, inasmuch as they had obtained a previous decree regarding $1/7^{\text{th}}$ share each but now claim $1/5^{\text{th}}$ share each in the subject property which, in the opinion of the learned Trial Judge, was “confusing” and “not clear”.

- 19.** However, we do not find any confusion in that regard, since the specific plaint case in the present suit is that due to the subsequent demise of two of the original co-owners, whose $1/7^{\text{th}}$ shares were declared in the partition suit, the calculation of shares for each of the co-owners was converted to $1/5^{\text{th}}$ each.
- 20.** Since the evidence-on-record before the learned Trial Judge was otherwise sufficient, we do not find any reason for the learned Trial Judge not to have adjudicated the suit on merits.
- 21.** Accordingly, FA 331 of 2025 is allowed on contest, thereby setting aside the impugned judgment and decree dated January 7, 2025 passed by the learned Civil Judge, Senior Division at Kandi, District- Murshidabad in Partition Suit No. 97 of 2009 and remanding the matter to the said court for a fresh adjudication of the suit on merits on the basis of the materials already on record, in the light of the above observations.
- 22.** In view of the long pendency of the suit, we request the learned Trial Judge to dispose of the same as expeditiously as possible,

positively within eight months from the date of communication of this order to the said court.

- 23.** CAN 1 of 2025 is accordingly disposed of as well.
- 24.** At this juncture, learned counsel for the appellants seeks an injunction in terms of the order of injunction which had been passed by the learned Trial Judge prior to the impugned decree being passed.
- 25.** Since, after disposal of the appeal, this court has been rendered *functus officio*, we choose not to grant such relief at this stage.
- 26.** However, liberty is given to the parties to make prayers for appropriate interim orders before the learned Trial Judge upon remand.
- 27.** There will be no order as to costs.
- 28.** Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)

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