

01.04.2026.
Item No. 13.
Court No. 13
pk/ap

F.A.T. No. 532 of 2018
IA No.CAN/1/2019 (Old CAN 8951/2019)
IA NO: CAN/2/2020 (Old CAN/503/2020)
I.A No. CAN/3/2023
I.A No. CAN/4/2023
Abdul Ohab & Ors.
Versus
Rokiya Bibi & Ors.

Mr. Prosenjit Mukherjee,
Mr. Nirmallya Kumar Das,
Mr. Saptarshi Chakraborty
Mr. Raja Roy

... for the appellants.

Mr. Chittopriya Ghosh,
Mr. Kuntal Ray,
Ms. Priyanka Saha

... for the respondent nos. 14 to 17.

Re: CAN 3 of 2023

1. CAN 3 of 2026 is an application for recording the death of the appellant no. 7, namely, Abu Bakkar, who died on 14.01.2022. It is stated in the said application that the said appellant died leaving behind his widow, and three daughters. Particulars of the said heirs and legal representatives of the deceased appellant no.7 are stated in the substitution application being CAN 3 of 2023.

2. Such prayer is allowed.

3. The legal heirs and representatives of the deceased appellant no.7 are substituted instead and in place of the deceased appellant no.7.

4. Abatement of the appeal on account of death of the appellant no. 7 shall stand set aside.

5. Accordingly, CAN 3 of 2023 is allowed and disposed of.

Re: CAN 4 of 2023

6. CAN 4 of 2023 is an application for substitution of the legal heirs of the deceased appellant no.1, namely, Abdul Ohab. It is stated in the said application that the said appellant died leaving behind his son. Particulars of the said heir and legal representative of the deceased appellant no.1 are stated in the substitution application being CAN 4 of 2023.

7. Such prayer is allowed.

8. The only legal heir and representative of the deceased appellant no.1 is substituted instead and in place of the deceased appellant no.1.

9. Abatement of the appeal on account of death of the appellant no. 1 shall stand set aside.

10. Accordingly, CAN 4 of 2023 is allowed and disposed of.

Re: FAT 532 of 2018

11. It is submitted by counsel for the respondent that the respondent no. 18 has died before filing of the appeal. Her legal heirs are already on record.

12. Let the name of respondent no. 18 be struck off from the records of the appeal.

13. The instant first appeal is directed against the judgment and decree dated 17th April, 2018 passed by the learned Civil Judge (Senior Division), 1st Court, Rampurhat, Birbhum in Title Suit No. 88 of 2009.

14. The subject matter of the suit was for partition of the properties of a common ancestor one Awal Mondal. The suit was dismissed by the Trial Judge on a twofold

ground. Firstly, that in an earlier partition suit being Title Suit No. 160 of 1938, certain properties of Awal Mondal have been left out therefrom.

15. Since the issue of res judicata was not raised by the respondents, it is presumed that a subsequent suit for partition of certain properties, lying ejmali and agreed between the parties not to form part of the earlier suit, can be sought partition in a subsequent suit.

16. The Trial Judge, however, found that all properties of Awal Mondal were not described in Schedule to the plaint by the appellants/plaintiffs. This is a curable defect and it would depend on the parties how the evidence would be led to deal with the same.

17. On the second ground on which the Trial Judge has dismissed the suit is more substantial. The Trial Judge found that several necessary parties to the suit have not been impleaded therein. The Trial Judge found that the parties had not disclosed whether certain sisters of legal heirs of Awal Mondal had predeceased the brothers. It was also not clear as to whether the brothers predeceased the sisters. Their legal heirs would be necessary and proper parties to the suit for partition for an effective and comprehensive decree to have been passed.

18. This Court is, therefore, of the view that the Trial Judge was, therefore, justified in holding that a complete and comprehensive partition of the ejmali properties of Awal Mondal could not be effectively determined.

19. This Court, however, notes that the suit need not have been dismissed on this ground, parties ought to have been granted liberty to bring all the legal heirs and persons entitled to a share in the properties of Late Awal Mondal be brought on record.

20. Having regard to the above and fact that the defendants/respondents had contended before the Trial Court in their written statement that the earlier Title Suit No. 160 of 1938 had already effected partition of the properties in question, the unpartition and ejmali properties still surviving the earlier partition suit may be considered for partition after all legal heirs of the successors of Late Awal Mondal are brought on record.

21. It is only thereafter that a Court could first determine as to whether there were any ejmali properties still remaining and surviving the earlier partition suit being Title Suit No. 160 of 1938.

22. Having regard to the above and reserving liberty to the parties to file a fresh suit for partition on the basis of the selfsame schedule properties contained in the plaint of the instant suit, leaving all defences to the respondents affirming the decree for dismissal of the suit, subject to the defences available to the defendants and other legal heirs and successors-in-interest of Awal Mondal, F.A.T. 532 of 2018 shall stand disposed of.

23. Let a decree passed by this Court be drawn up expeditiously.

24. In view of the disposal of the appeal itself, the connected applications, if any, are disposed of.

25. There will be no order as to costs.

26. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Rai Chattopadhyay, J.)