

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

FAT 413 of 2025
IA No: CAN 1 of 2025

Chandu Ali Khan and others
Vs.
Jahangir Khan and others

For the appellants : Mr. Dyutiman Banerjee,
Mr. Ayaskanta Ghosh,
Mr. Debjit Dutta

For the respondent no.1 : Mr. Tanmoy Mukherjee,
Mr. Souvik Das,
Mr. Rudranil Das,
Mr. Samu Mandi

Heard on : 18.03.2026

Judgment on : 18.03.2026

Sabyasachi Bhattacharyya, J.:-

1. In view of the short point involved, the appeal itself is taken up for hearing on the basis of the papers on record, along with the connected application. Since the plaintiff/respondent no. 1 has already entered appearance through his learned Advocate, service of notice of the appeal on the said respondent is dispensed with. As neither any relief has been claimed against the

defendants/respondents, nor have they preferred any challenge against the impugned decree, service of notice of the appeal on the other respondents is also dispensed with. The appeal, thus, is deemed to be ready as regards service.

2. The present challenge has been preferred by the defendant nos. 1, 2 and 3 in a partition suit, against the preliminary decree passed therein.
3. Although the shares of the parties as declared by the learned Trial Judge have not been objected to in principle, the appellants assail the declaration in the impugned preliminary decree to the effect that a passage, marked as ABCD in the sketch map annexed to the plaint, is a joint pathway between the parties, that is, the co-sharers of 'Ka' schedule property.
4. Learned counsel appearing for the appellants argues that the said purported pathway is not reflected from the title deed of the present appellants.
5. Moreover, since only some of the co-owners of a larger chunk of property sold different portions of the said property respectively to the plaintiffs and the defendants, the said vendors could not carve out additional rights or change the character of the property from its original nature by themselves.
6. It is argued that a vendor cannot convey a better title than he/she has.
7. It is further argued that the so-called pathway is a property which is in occupation of the present appellants.

8. Learned counsel appearing for the plaintiff/respondent no.1 contends that the learned Trial Judge categorically found in the impugned judgment that it is corroborated by most of the title deeds of the respective parties, executed by common vendors, that the pathway-in-question is a joint pathway of all the co-owners of the 'Ka' schedule property, which comprises of the entire block of joint property.
9. Further, it is pointed out that an Advocate Commissioner held local inspection and filed his report, to which no objection was sought to be filed by the defendants/appellants. Furthermore, learned counsel relies on the portion of the judgment where the learned Trial Judge categorically observed that the joint right of the pathway, without which the 'Ka' schedule property cannot be used at all by all the co-sharers, is revealed from the documents of title of both the plaintiff as well as the defendants and also from the partition plan prepared in presence of both parties.
10. Upon a perusal of the impugned judgment, we find that the learned Trial Judge proceeded on one of the plausible views which is possible to be taken on the basis of the materials on record.
11. The learned Trial Judge went on to record in the impugned judgment that an Advocate Commissioner's report was filed and marked as Exhibit-2, from which the existence of a *kancha* road marked as ABCD, which is about 120 ft. long and 9.4 ft. broad, within the 'Ka' schedule property was established. It was further recorded that at the time of cross-examination, the defendant/appellant no.1,

deposing as D.W. 1, had categorically stated that he had filed no objection in respect of such local inspection report.

12. Although it was argued on behalf of the defendants that the original owners of the suit property did not demarcate any portion of land as pathway, the learned Trial Judge placed reliance on Exhibit-4 and Exhibit-C as well as Exhibit-3, the respective deeds of the plaintiff and some of the defendants, to come to the conclusion that in all the said deeds, there was corroborative reference to such joint pathway. Although the specific purchase deeds of the present appellants might not have reflected such pathway, the common vendors' intention was clear with regard to creation of such pathway for the convenience of the purchasers, since otherwise it would be inconvenient for the parties to have access to their respective portions, which they had full right to do.
13. Since the defendant nos. 1, 2 and 3/appellants claim title to the suit property through the self-same vendors, they cannot dispute the title of the vendors. Associated with the bundle of rights pertaining to the ownership of the said vendors, *albeit* in respect of a share in the original chunk of property, was also included the right to carve out a pathway in-between the property sold by them, for the convenience of the purchasers. The necessity to create such pathway, although it might not have existed previously, was co-extensive and originated simultaneously with the execution of the deeds and vesting of portions of the property in respect of different purchasers, since otherwise it would be difficult for the said purchasers (the parties to

the present litigation) to enjoy their respective portions by having access thereto through the property of the others.

14. In the Trial Court, the appellants relied on certain decisions of the Hon'ble Supreme Court as well as the Madhya Pradesh High Court in support of the proposition that a co-sharer can only sell to the extent of his share but not any specific portion of the land.
15. Even going by such principle, the parties have chosen the route of partition to have their specific portions in the property demarcated.
16. Furthermore, even if it is held that no specific portion could be allotted to any of the parties, the nature and character of a portion of the transferred property could very well be identified by the vendors in the sale deeds executed by them.
17. Moreover, in view of the specific admissions of the defendant no.1 as D.W.1, as recorded in the impugned judgment, it cannot be said that there was no existence of such pathway. The D.W.1 further admitted that there is a *moram* road running East to West, situated to the North of the suit *Dag* and that a sketch map depicting the possession of the co-sharers was prepared in his presence along with the others. The D.W.1 also identified his signature on Exhibit-10 (which was marked as Exhibit-10/1), which is a hand sketch map establishing the fact of existence of a pathway on the Northern side of the suit plot.
18. Hence, we do not find any scope of interference with the consistent findings of the learned Trial Judge based on the materials placed before the said court, since it is well-settled that the Appellate Court,

even if it is possible, shall not substitute its own views for that of the learned Trial Judge if two views are possible.

19. Accordingly, FAT 413 of 2025 is dismissed on contest, thereby affirming the judgment and preliminary decree dated March 28, 2024 passed by the learned Civil Judge (Senior Division) at Ghatal, District: Paschim Medinipur in Title Suit No. 72 of 2015.
20. Accordingly, CAN 1 of 2025 also stands disposed of.
21. There will be no order as to costs.
22. A formal decree be drawn up accordingly.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)