

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 431 of 2025
IA No: CAN 1 of 2025
CAN 2 of 2025

Chittanku Ranjan Das
Vs.
Smt. Swati Das and others

For the appellant	:	Mr. Tanmoy Mukherjee, Ms. Susmita Chatterjee, Ms. Dipanwita Ganguly Mr. Soumava Santra
For the respondent nos. 1 & 2	:	Mr. Aniruddha Chatterjee, Sr. Adv., Mr. Sounak Bhattacharya, Mr. Anirban Saha Roy, Mr. Sounak Mondal, Mr. Abhirup Halder
For the respondent no.5	:	Mr. Ramesh Chandra Paul
Heard on	:	05.01.2026
Judgment on	:	05.01.2026

Sabyasachi Bhattacharyya, J.:-

Re: CAN 1 of 2025

1. In view of sufficient explanation for the delay in preferring the appeal having been made out, CAN 1 of 2025 is allowed, thereby condoning the delay in filing FAT 431 of 2025.

2. Let the appeal be deemed to stand registered and admitted.
3. There will be no order as to costs.

Re: FAT 431 of 2025
CAN 2 of 2025

4. In view of the short conspectus of the appeal, the same is taken up for hearing, by dispensation of preparation of formal paper books and calling for the trial court records, along with the stay application.
5. The present appeal has been preferred against a preliminary decree of partition.
6. The primary contention of the defendant/appellant before this Court is two-fold. First, that some of the daughters of the original absolute owner Chinta Haran Das have not been impleaded as parties to the suit, thereby rendering the partition suit bad for non-joinder of necessary parties. Secondly, some of the joint properties belonging to the parties have not been brought within the hotchpot of the partition suit, thereby vitiating the suit in its present form on the ground of partial partition.
7. Learned counsel for the appellant hands over copies of a deed of settlement, which was exhibited in the trial court, to reiterate that in terms of the said deed, the said original owner Chinta Haran Das had created a trust and included Smt. Charu Bala Das, his wife, along with his sons, as trustees. It is, thus, contended that upon the demise of Charu Bala, the daughters of Chinta Haran Das and Charu Bala would be entitled, in the capacity of heirs of Charu Bala Das, to

be co-owners of the property, although not made trustees directly in the deed of settlement.

8. That apart, learned counsel for the appellant relies on the written statement of the defendant/appellant in the trial court, where it was pleaded that the suit is bad for partial partition, since certain other properties, which are also joint properties between the parties, have not been brought within the hotchpot of the suit.
9. Learned senior counsel appearing for the plaintiffs/respondents argues that even from the deed of settlement dated March 04, 1957 relied on by the defendant no.2/appellant, it is evident that merely life interest was given to Smt. Charu Bala Das. Thereafter, the property was to devolve absolutely to the remaining trustees, that is, the sons of Chinta Haran Das.
10. Hence, it is argued that the daughters of Chinta Haran Das are not co-owners and cannot be necessary parties to the partition suit.
11. Insofar as the partial partition argument is concerned, learned senior counsel places reliance on the relevant portions of the impugned judgment where the learned Trial Judge dealt with the said contention and placed reliance on the admission of the defendant/appellant as D.W.2, to the effect that a business was being run at 12-B, Russel Street, which is owned not exclusively by the present parties, but also one niece, Sima Bose apart from the parties to the partition suit.
12. On the premise of such admission, the learned Trial Judge, it is pointed out, proceeded to come to the conclusion that the suit is

perfectly maintainable in its present form and accordingly granted the preliminary decree therein.

13. Upon hearing learned counsel for the parties, we find substance in the contentions of the plaintiffs/respondents inasmuch as the deed of settlement dated March 04, 1957, although nominating Smt. Charu Bala Das, the wife of the settlor Chinta Haran Das, as one of the trustees along with the other sons of Chinta Haran, categorically mentions in Clause 3(a) thereof that the said Charu Bala had only life interest during her natural life in the property. Sub-clause (b) of Clause 3 of the said deed of settlement dated March 04, 1957 specifies in no uncertain terms that after the demise of the settlor's wife Charu Bala, the property would devolve absolutely in equal shares on the other trustees, that is, the sons of Chinta Haran, subject only to the rider that the expenses of the marriage for the then-unmarried daughters of the settlor would borne out of the trust estate.
14. Upon query of this Court, learned counsel for the appellant submits that the daughters of the settlor have since been married. As such, there is not even any scope of any charge of the property at present for such matrimonial expenses. Even otherwise, in our opinion, a charge cannot be elevated to the plane of title to the property.
15. Be that as it may, since in view of the deed of settlement itself, it is evident that the property devolved after the demise of Charu Bala Das on the sons of Chinta Haran, the original owner, there arises no question of the daughters of Chinta Haran and Charu Bala having

any title in the suit property. Hence, the ground of non-joinder of the daughters cannot be accepted.

16. Insofar as partial partition is concerned, learned senior counsel for the plaintiffs/respondents places reliance on the admission of D.W.2 (defendant no.2/appellant) dated January 08, 2018 where it was admitted by D.W.2 that she had no objection to partition being effected and also admitted that the parties have share in the property.
17. From the exhibit list recorded in the impugned judgment, we find that the defendants only exhibited certain KMC trade licence and receipts of certificate of enlistment, as well as printed rent receipts, but no document to indicate that some other properties than the suit property was jointly owned by the parties to the present litigation exclusively. In fact, the learned Trial Judge has come to a justified conclusion, by consideration of the admission of D.W.2 in her cross-examination, that the property at 52, M.G. Road is owned by the aunt of the defendants along with the present parties as well as that the business run at 12-B, Russel Street is owned by one niece Sima Bose apart from the present parties, thereby taking both such properties, immovable and moveable, outside the ambit of exclusively owned joint properties of the present parties.
18. It is well-settled that if a property is owned jointly by the parties to a partition suit along with a stranger to the suit, which stranger is not a co-owner in respect of the other properties brought within the hotchpot of the partition suit, the said property where the stranger is a co-owner shall not come within the purview of the partition suit.

19. As such, we are of the opinion that the learned Trial Judge exercised discretion judicially and correctly, on the basis of the materials on record and the admission of the defendant no. 2/appellant, to pass the preliminary decree by negating the contentions of non-joinder and partial partition raised by the defendant no. 2/appellant.
20. Accordingly, there is no scope of interference in the appeal.
21. Hence, FAT 431 of 2025 is dismissed on contest, thereby affirming the impugned judgment and preliminary decree dated July 28, 2025 passed by the learned Judge, Eleventh Bench, City Civil Court at Calcutta in Title Suit No. 1568 of 2013.
22. Consequentially, CAN 2 of 2025 is also disposed of.
23. There will be no order as to costs.
24. A formal decree be drawn up accordingly.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)