

Sl. No. 56
tkm/akd

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

FA 434 of 2025
(CAN 1 of 2025)

Daljit Singh Sondhi
Vs.
Ranjit Kaur and others

For the appellant : Mr. Sounak Bhattacharya,
Mr. Sounak Mondal,
Mr. Anirban Saha Roy,
Ms. Bipasha Bhattacharyya.

For the respondent
Nos. 2, 3, 4, 9 & 11-13 : Ms. Shyanti Poddar.

Heard on : 01.12.2025 & 05.01.2026

Judgment on : 05.01.2026

Sabyasachi Bhattacharyya, J.:-

1. Affidavit-of-service filed in court today be kept with the record. It appears therefrom that substantial service has been effected, although all the respondents are not represented today before us.

2. The conspectus of the appeal is extremely short and as such, instead of relegating the parties to a long-drawn legal battle, we take up the appeal itself for disposal along with the application.
3. The short point involved in the appeal is as follows :-
4. The plaintiff/appellant filed a suit for partition. By an order dated April 21, 2025 passed in the said suit, as evident from the impugned judgment itself, the learned trial Judge recorded that the suit would proceed ex parte as the defendants did not take any steps after appearance. It was further recorded in the impugned judgment that in course of further hearing of the suit, one Sunbir Singh Sondhi, the son of the appellant, adduced evidence by filing his examination-in-chief as PW 1.
5. Certain documents were also marked as exhibits.
6. However, the learned trial Judge proceeded on the premise that under Order III Rule 1 of the Code of Civil Procedure, any appearance, application or act in or to any court, required or authorized by law to be made or done by a party in such court, may be made or done by the party in person, or by his recognized agent, or by a pleader. The learned trial Judge also took into consideration that the recognized agents, as per Order III Rule 2 of the Code, are persons holding power of attorney or persons carrying on trade or business for and in the name of the parties.
7. Upon consideration of the above provisions, the learned trial Judge proceeded to observe that in a legal proceeding, evidence should be presented through “proper channel” involving written documentation

or adherence to legal procedure. Accordingly, it was held that the evidence adduced by the said Sunbir Singh Sondhi, son of the plaintiff/appellant, was found to be unacceptable in the eye of law. Since there was no other witness adduced by the plaintiff, the suit itself was dismissed *exparte*.

8. *Exfacie*, the above approach of the learned trial Judge is contrary to law.
9. It is trite law that anybody, be him/her a relative of one of the parties or in anyway connected or unconnected with the suit, having direct knowledge of the facts pertaining to the disputes involved in a suit has the right to adduce evidence as a witness in the suit.
10. For adducing evidence in individual capacity, a person need not be a recognized agent or pleader of a party to the suit.
11. In fact, the established position of law is to the contrary, inasmuch as it is well-settled that a person cannot be empowered by a party to a suit to adduce evidence on behalf of such party merely on the strength of a power of attorney unless the witness has direct knowledge of the facts pertaining to the suit.
12. The learned trial Judge, with due respect, turned the law on its head.
13. We find from the affidavit-in-chief filed by the said Sunbir Singh Sondhi, son of the plaintiff, as PW 1 that in the very first paragraph thereof he has stated that apart from being the son of the plaintiff, he looks after the case on behalf of the plaintiff and as such is acquainted with the facts and circumstances of the case and is competent to swear the affidavit. Within the contemplation of Order

XVIII of the Code of Civil Procedure, the affidavit of examination-in-chief is a mere substitute for oral evidence.

14. Thus, the laws governing the evidence would be applicable to an affidavit-in-chief. Since the witness has categorically stated in the very first paragraph of his affidavit-in-chief that he looked after the case on behalf of the plaintiff and, more particularly, that he was acquainted with the facts and circumstances of the case, the said witness automatically qualified as a valid witness in the eye of law.
15. Since the suit had already been placed on the ex parte board and no attempt to cross-examine the said witness was made by the defendants, there was no scope for the learned trial Judge to discard the said evidence on a frivolous invocation of Order III of the Code of Civil Procedure, which is not applicable in the present case at all.
16. The said evidence ought to have been accepted by application of the doctrine of non-traverse. It is clear from the very language of Order III Rules 1 and 2 that the same applies only to an “appearance” on behalf of a party to the suit. However, adduction of evidence cannot be included within the ambit of “representation” or “appearance” on behalf of a party to the suit. A witness stands on an entirely different footing than a representative of a party for the purpose of appearance in the suit and merely having direct knowledge of the facts and circumstances leading to the suit would sufficiently entitle a witness to adduce evidence, irrespective of whether such witness is a representative of a party to the suit.

17. In view of the above observations, we are of the opinion that the learned trial Judge erred in law in discarding the uncontroverted evidence of PW 1 on a frivolous and misconceived ground and consequentially dismissing the suit exparte.
18. Accordingly, FA 434 of 2025 is allowed on contest, thereby setting aside the impugned judgment and exparte decree dated July 25, 2025 passed by the learned Civil Judge (Senior Division), Eighth Court at Alipore, District: South 24-Parganas in Title Suit No. 3 of 2003.
19. We hereby remand the suit to the said court for the purpose of taking up the same for hearing from the stage which it had reached prior to passing of the impugned judgment. The learned trial Judge shall now proceed to consider the examination-in-chief of PW 1 as valid evidence and pass a preliminary decree in terms of the same and the other materials on record and thereafter proceed to dispose of the partition suit from which the present appeal arises.
20. Consequentially, CAN 1 of 2025 stands disposed of as well.
21. There will be no order as to costs.
22. 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.

(Supratim Bhattacharya, J.)