

Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present : The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
&
The Hon'ble Mr. Justice Biswaroop Chowdhury

FA No. 2 of 2026
+
CAN 1 of 2025

Smt. Ruma Mukhopadhyay and others
-vs-
Sri Manik Lal Banerjee and another

For the appellant : Mr. Partha Pratim Roy,
Mr. Saikat Gayen.

For the respondent no. 1 : Mr. Rwitendra Banerjee,
Mr. A. Sengupta

Heard on : February 5, 2026.

Judgment on : February 5, 2026.

Sabyasachi Bhattacharyya, J.:

1. As per previous direction, the appeal is taken up for hearing along with the application.

2. The limited question involved in the appeal is whether the learned trial Judge was justified in dismissing the plaintiffs/appellants' suit for partition as a whole on the ground that the title of the parties could not be proved by either of the parties to the suit.
3. In the judgment, it was recorded that the plot information in respect of LR Dag No. 1605 of Mouza – Balagarh, which is the suit property, was produced before the learned trial Judge showing that it corresponds to RSROR No. 1787; however, the learned trial Judge was of the opinion that the RSROR had not been produced to show that the same corresponds with the plot number mentioned in the title deed on which the plaintiffs relied on.
4. Learned counsel for the appellants rightly points out that in the absence of any issue being framed on the identity of the suit property, the plaintiffs/appellants were not taken by surprise when the suit was dismissed on such ground. It is submitted that the plaintiffs did not have any opportunity at all to produce further documents, if necessary, to satisfy the conscience of the learned trial Judge as to the missing link between the

RSROR entries and the property mentioned in the title deeds of the plaintiffs.

5. Learned counsel appearing for the contesting respondent no. 1 also points out that the respondent no. 1, in his written statement, had specifically raised a plea of ouster.
6. Hence, it is not the case of even the contesting defendant / respondent no. 1 that the parties do not have title to the property. The plea of ouster itself implies that the title of the parties to the property is admitted.
7. We, thus, are of the opinion that the learned trial Judge ought to have granted further opportunity to the parties to adduce further evidence, in the event the learned trial Judge was of the opinion that the identity of the property and the title of the parties could not be established properly.
8. In such view of the matter, FA No. 2 of 2026 is allowed on contest against the respondent no. 1 and *ex parte* against the other respondents, thereby setting aside the impugned judgment and decree dated August 30, 2025 passed by the learned Civil Judge (Senior Division), First Court at Chinsurah, District- Hooghly, in Title Suit No. 108 of 2022 and remanding the suit to the learned trial Judge for permitting both sides to

adduce fresh evidence and to re-adjudicate the suit on merits on the basis of the evidence already on record and additional evidence, if adduced by the parties, granting adequate opportunity to the parties to establish their respective cases in terms of their pleadings before the learned trial Judge.

9. For such purpose, it will be open to the learned trial Judge to recast the issues, if deemed necessary, including the framing of appropriate issue on the identity of the suit property.
10. It is expected that in view of long pendency of the matter, the learned trial Judge shall make all endeavour to dispose of the suit after remand within eight months from the date of communication of this order to the learned trial Judge.
11. CAN 1 of 2025 is accordingly disposed of as well.
12. There will be no order as to costs.
13. Urgent photostat certified copy of the order, if applied for, be supplied to the parties at an early date.

I agree.

(Sabyasachi Bhattacharyya, J.)

(Biswaroop Chowdhury, J.)