

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 569 of 2025
IA No: CAN 1 of 2026
CAN 2 of 2026

Astab Ali Sekh @ Astab Sekh and another
Vs.
Jahangir Sekh and others

For the appellants : Mr. Dhiman Banerjee,
Mr. Quazi Ezaz Ahmed

Heard on : 30.06.2026

Judgment on : 30.06.2026

Sabyasachi Bhattacharyya, J.:-

Re: CAN 1 of 2026

1. Affidavits-of-service filed today be kept on record. Despite service, none appears for the respondents at the time of call. Hence the matter is taken up for *ex parte* hearing.
2. In view of sufficient explanation for the delay having been made out, CAN 1 of 2026 is allowed, thereby condoning the delay in preferring FAT 569 of 2025.
3. There will be no order as to costs.
4. The appeal be deemed to stand registered and admitted.

Re: FAT 569 of 2025
with
CAN 2 of 2026

5. In view of the short conspectus of the appeal, and since we intend to dismiss the appeal on the grounds to be narrated below, further service of notice on the respondents is dispensed with.
6. Since the point involved is limited, the appeal itself is taken up for hearing along with the application.
7. The present appeal has been preferred against the dismissal of the plaintiffs/appellants' suit for partition on the ground of non-joinder of one co-owner who was held to be a necessary party to the suit but was omitted to be impleaded.
8. Upon hearing learned counsel for the plaintiffs/appellants, it transpires that although P.W.5, deposing on behalf of the plaintiffs, stated in his evidence that the non-impleaded co-sharer had transferred his title previous to institution of the suit and was, thus, no longer a co-sharer or a necessary party, no such transfer deed was produced in the Trial Court.
9. Thus, in the absence of any registered transfer deed, we do not find any fault with the judgment of the learned Trial Judge whereby the learned Trial Judge disbelieved such transfer and held that the suit is bad for non-joinder of the omitted co-sharer, who was a necessary party.
10. In any event, the dismissal of a suit for non-joinder of necessary party is not a dismissal on merits and does not preclude the plaintiffs from instituting a fresh suit by joining all the necessary and proper parties.

11. Even otherwise, the cause of action for a partition suit arises *de die in diem* and, as such, there is no bar of limitation in the event a fresh partition suit is filed by the plaintiffs/appellants, of course, by impleading all co-sharers of the suit property, being necessary parties.
12. Accordingly, FAT 569 of 2025 is dismissed, thereby affirming the impugned judgment and decree dated May 22, 2025 passed by the learned Civil Judge (Senior Division), Second Court at Krishnanagar, District: Nadia in Title Suit No. 25 of 2014.
13. CAN 2 of 2026 is also disposed of accordingly.
14. It is made clear that nothing in the impugned judgment and decree as well as the present dismissal shall preclude the plaintiffs/appellants from instituting a fresh suit for partition seeking the self-same reliefs in respect of the suit property, by impleading all co-sharers who are necessary parties to such suit.
15. There will be no order as to costs.
16. A formal decree be drawn up accordingly.
17. Interim order, if any, stands vacated.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)