

**In the High Court At Calcutta
CIVIL APPELLATE JURISDICTION
CIRCUIT BENCH AT JALPAIGURI
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

**SA 3 of 2025
With
CAN 1 of 2025
With
CAN 2 of 2026**

**Smt. Shyamla Barman & Ors.
VS
Sri Sudhir Barman & Ors.**

*For the Appellants : Mr. Narendra Nath Das, Advocate
Mr. Pragyadip Roy Basunia, Advocate
Mr. Jagesh Chandra Roy, Advocate
Mr. Madhab Kumar Roy, Advocate
Mr. Debojit Roy, Advocate*

*For the Respondents : Ms. Suman Sehanabis, Advocate
Ms. Salok Sah, Advocate
Ms. Anwesha Chakraborty, Advocate*

Heard & Judgment on: March 23, 2026

Debangsu Basak, J.

1. Appeal is directed against the judgment and decree dated June 13, 2025 passed in Title Appeal No. 29 of 2015.
2. By the impugned and decree, the learned 1st Appeal Court reversed the judgment dated June 29, 2015 and the decree dated July 4, 2015 passed by the learned Trial Court in Title Suit No.3 of 2012, and dismissed the suit filed by the appellants.

3. Appeal was admitted by the Division Bench on September 1, 2025 on the following questions of law :-

"I) Whether the learned appellate court erred in setting aside the judgment and decree of the learned trial Judge on the ground of non-joinder of Naresh Chandra Barman, who was not concerned with the dispute involved in the suit. The dispute was restricted to an area of land allegedly owned, enjoyed and possessed by the appellants, as delineated in the schedule of the plaint.

II) Whether non-impleadment of Naresh Chandra Barman would be fatal to the suit, when the cause of action of the appellants was against the respondents who were allegedly disturbing the possession of the appellants in respect of 2.88 acres of land.

III) Whether Naresh Chandra Barman was either a necessary or a proper party for adjudication of the dispute between the appellants who claimed to be the exclusive owners of 2.88 acres of the plots in question, especially when Naresh Chandra Barman did not have any right, title and interest in respect of the said 2.88 acres of land."

4. Learned advocate appearing for the appellant submits that, the suit for declaration and injunction was initially decreed. On appeal, the judgment and decree was reversed. He submits that, admittedly, the appellants are co-owners of the immovable property concerned. He draws the attention of the Court to the issues framed before the learned Trial Judge. He submits that, the learned 1st Appeal Court did not frame any issue as to non-joinder and mis-joinder of parties.

5. Referring to Order I Rule 9 of the Code of Civil Procedure, 1908, he submits that, non-joinder of necessary parties is not fatal to the case of the plaintiff. In support of such contention, he relies upon **AIR Online 2023 HP 1281 [Mohinder Singh vs. Gurbax Singh]** and the judgment of the Hon'ble Supreme Court reported in **(2006) 2 SCC 724 [Mohinder Prasad Jain vs. Manohar Lal Jain]**
6. Learned advocate appearing for the appellant draws the attention of the Court to the provisions of Order XLI Rule 25 of the Code of Civil Procedure, 1908 and submits that, the 1st Appeal Court erred in not framing an issue with regard to non-joinder of parties.
7. Relying upon **(2008) 12 SCC 372 [Bachahan Devi & Anr. Vs. Nagar Nigam, Gorakhpur & Anr.]** learned advocate appearing for the appellants submits that, additional issues can be framed by the appeal Court.
8. Relying upon **(2025) 3 SCC 286 [Shyam Kumar Inani vs. Vinod Agarwal and Ors.]**, learned advocate appearing for the appellants submits that, description of the immovable property appears from the pleadings in the plaint. On such ground alone, the suit cannot be dismissed.
9. Learned advocate appearing for the respondents submits that, the immovable suit property, in fact, involves 11.44 acres of land. Out of such, 11.44 acres, the appellants as plaintiffs are seeking declaration as owners of 2.88 acres. She refers to the pleadings in the plaint. She submits that, plaintiffs are tracing ownership through one Sarat Chandra Barman, since deceased. She submits that, Sarat Chandra Barman and his brother Naresh Chandra Barman were granted the 11.44 acres of land by one Giribla Karjee and Surabala Roy by a deed of gift. All heirs and legal representatives of Naresh Chandra Barman are not parties to the

suit. In absence of all co-owners of the property to the suit being parties to the suit, a declaratory decree in the nature as prayed for by the plaintiffs cannot be passed.

10. Learned advocate appearing for the respondents submits that, out of 11.44 acres, 2.88 acres is sought to be declared as being owned by the plaintiffs. Which portion of 11.44 acres of land involved is not described in the schedule to the plaint. She refers to the schedule to the plaint in this regard.
11. Learned advocate appearing for the respondents submits that, the heirs and legal representatives of Naresh Chandra Barman filed another civil suit in respect of the very same plots of land which such suit was dismissed right up to the second appeal stage. She refers to the order dated July 24, 2025 passed in SAT 8 of 2024 in this regard.
12. In response, learned advocate appearing for the appellants submits that, a review petition directed against the order dated July 24, 2025 passed in SAT 8 of 2024 is pending.
13. Plaintiffs approached the learned Trial Judge seeking, inter alia, for the following reliefs:-

"a) A decree by way of declaration that the plaintiffs are the legal and rightful owners of the suit land and the defendants have got no right, title and interest as well as possession over the suit land.

b) A decree by way of declaration that the defendants cannot disturb the peaceful possession of the plaintiff over the suit land.

c) A permanent injunction restraining the defendants from entering upon the suit land.

d) For cost of the suit;

e) Any other relief/reliefs the plaintiff is entitled to as per law.”

14. In the body of the plaint, the plaintiffs claimed that the suit property was 11.44 acres. The suit property was gifted by one Giribala Karjee and Surabala Roy to Sarat Chandra Barman and Naresh Chandra Barman. Sarat Chandra Barman expired on May 5, 1995. The plaintiffs are in possession and occupation of 2.88 acres out of 11.44 acres. The schedule to the plaint does not describe which portion of 11.44 acres comprised of 2.88 acres that the plaintiffs are in possession of.
15. That apart, all the owners of the entire 11.44 acres are not parties to the suit admittedly.
16. Learned Trial Judge proceeded to decree the suit. On first appeal the decree was revised. Primary ground of revision of the decree of declaration by the 1st Appeal Court is that all co-owners of the suit property were not made parties to the suit.
17. The three questions of law framed by the Division Bench on September 1, 2025 relates to non-impleadment of the heirs and legal representatives of Naresh Chandra Barman in the suit for declaration.
18. Authorities cited at the Bar on this issue are **Mohinder Singh** (*supra*) and **Mohinder Prasad Jain** (*supra*). **Mohinder Prasad Jain** (*supra*) is a suit for eviction of a tenant. In such context, it was held that, co-owners can file a suit for eviction of a tenant from a property without making all co-owners as parties to such suit for eviction on the principle of agency.
19. **Mohinder Singh** (*supra*) is not a binding precedent in this Court. It is the view that, a suit by a co-owner for possession against a trespasser without impleading the other co-owners is maintainable and that suit is not bad for non-joinder of necessary parties.

20. Principle of agency in the facts and circumstances of the present case is not attracted since it is not the pleading of the plaintiffs that they are agents of other co-owners. Existence of other co-owners is an established fact. Moreover, the plot concerned comprise an area of 11.44 acres out of which the plaintiffs are claiming to be sole and absolute owners of 2.88 acres. Which portion of 11.44 acres comprise the 2.88 acres is not pleaded in the plaint. Schedule to the plaint does not demarcate such area.
21. In fact, the other branch of Naresh Chandra Barman filed a suit which was dismissed upto the second appeal stage. There, the Division Bench on July 24, 2025 found the suit to be bad for non-joinder of parties. The same analogy applies to the plaintiffs.
22. **Shyam Kumar Inani** (*supra*) relates to a suit for specific performance of an agreement of sale. In the facts and circumstances of that particular case, the Supreme Court found that the suit property was adequately described in the agreement specific performance of which was sought for, and, therefore, proceeded to hold that absence of explicit boundary details did not render the agreement vague or unenforceable. Such is not the factual scenario here.
23. In such circumstances, the three questions of law framed by Division Bench on September 1, 2025 are answered by holding that in the facts and circumstances of the present case, non-joinder of Naresh Chandra Barman is fatal to the suit of the plaintiff.
24. SA 3 of 2025 is **dismissed**. Impugned judgment is affirmed. Connected applications are also dismissed without any order as to costs.

(Debangsu Basak, J.)

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