

17.03.2026

Item no.28-29
Court No. 16

Asraf, A.R.(Ct.)

In the High Court at Calcutta

Civil Appellate Jurisdiction

Appellate Side

Case No.

FAT 76 of 2025

with

CAN 1 of 2025

CAN 2 of 2025

In the matter of :

MRINAL KANTI SAMANTA

.... Appellant

VS.

SMT. MIRA GUPTA & ORS.

....Respondents

with

Case No.

FAT 75 of 2025

with

CAN 1 of 2025

CAN 2 of 2025

In the matter of :

MRINAL KANTI SAMANTA

.... Appellant

VS.

SMT. MIRA GUPTA & ORS.

....Respondents

For the Appellant :

Mr. Debdutta Basu

Mr. Sandip Ghosh

Mr. Partha Sarkar

Ms. Soumalika Nandan

....Advocates

For the Respondent Nos. 1-3 :

Mr. Sarbananda Sanyal

Ms. Poulami Chakraborty

Mr. Saikat Gayen

....Advocates

1. FAT 75 of 2025 has been preferred against the preliminary decree passed in a partition suit of 2013 whereas FAT 76 of 2025 against the final decree passed in the self-same suit. The preliminary decree was passed on November 3,

2016 whereas the final decree on December 14, 2022. Common explanations for the delay in preferring both the appeals have been furnished in the connected condonation applications.

2. Learned counsel for the appellant submits that the address of the defendant no.1 / appellant as mentioned in the amended plaint of the partition suit filed by the plaintiffs / respondents was erroneous. Whereas the appellant resides at 19, Club Road, Sukchar Park, Police Station - Kharda, Kolkata - 700115, the current address of the appellant was shown in the plaint as 19, Club Road, "Sukeher Park, P.S. - Sukekor, Kolkata - 27".
3. Learned counsel for the appellant places reliance on the certified copy of the order sheet of the Trial Court, handed over in Court, to show that vide Order no.25 dated February 2, 2015, the learned Trial Judge had recorded that since summons had not been served on the defendant nos.1 to 4, who were the main contesting defendants, substituted service should be effected by newspaper publication in the area "where the defendants originally reside and work".
4. Although such direction was in consonance with the statute, fact remains that if the current

address of the appellant was given erroneously in the plaint itself, the paper publication must have happened in the said area only.

5. Thus, we *prima facie* find a strong case for condonation of delay having been made out, since apparently the summons could not have been served on the defendant no.1/appellant.
6. Again, in Order no.43 dated January 8, 2019 passed in the final decree proceeding of the suit, it was recorded by the learned Trial Judge that as the preliminary decree had already been passed against the same defendants / judgment debtors, the Court did not find any cogent reason to afford further opportunity to the defendants / judgment debtors for their appearance keeping in mind the report of the service return.
7. Vide Order no.61 dated September 19, 2022, the learned Trial Judge allowed an application of the plaintiffs/respondent nos. 1 to 3 for exemption of service of notice upon defendant nos.1 to 4, 6, 8 to 12 in terms of the order dated January 8, 2019.
8. Thus, it becomes all the more doubtful as to whether the summons of the suit was served at all on the appellant.

9. At this juncture, learned counsel for the plaintiffs / respondent nos.1 to 3 seeks some time from the Court to take instructions on the ordersheet which is handed over in Court today, a copy of which has been served on him as well.
10. Accordingly, let the matter stand adjourned till March 23, 2026, when the application shall next be listed under the same heading.

(Sabyasachi Bhattacharyya, J.)

(Supratim Bhattacharya, J.)