

AD-14-15
Ct No.16
23.03.2026
(SSS)

FAT 76 of 2025
with
CAN 1 of 2025
with
CAN 2 of 2025
with
FAT 75 of 2025
with
CAN 1 of 2025
with
CAN 2 of 2025

Mrinal Kanti Samanta
Vs.
Smt. Mira Gupta and Ors.

Mr. Debdutta Basu,
Mr. Sandip Ghosh,
Mr. Partha Sarkar,
Ms. Jayashree Dari, Advs.

.....For the petitioner in both matters.

Mr. Sarbananda Sanyal,
Mr. Samrat Chakraborty,
Mr. Saikat Gayen, Advs.

...For the respondents in FAT 76 of 2025.

1. Peculiar circumstances have arisen in the present case.
2. The appellant has challenged both the preliminary decree and the final decree passed in a partition suit by way of two separate appeals after a huge delay, of 3880 days and 828 days respectively.
3. Learned counsel appearing for the appellant, by placing reliance on the certified copy of the

order sheet of the suit, submits that the summons of the suit was never served on the defendant no. 1/appellant.

4. By taking the Court through several orders passed in the suit at the preliminary decree stage, it is stressed that the current address of the defendant no. 1/appellant as mentioned in the plaint was the address at which service was attempted on every occasion. Vide order no. 25 dated February 2, 2025, substituted service under Order V Rule 20 of the Code of Civil Procedure was directed, *inter alia*, on the defendant no. 1/appellant, through paper publication, which publication was to be made in newspapers of the area “where the defendants ordinarily reside and works by them”.

5. It is thus contended that since the substituted service was also effected in the area of the erroneous current address of the defendant no. 1/appellant, there was no service of summons at all, which resulted in the preliminary decree being vitiated on such count as well, since it was passed *ex parte* without service of summons in a proper manner on the appellant.

6. Even thereafter, during the final decree proceedings, it is pointed out that the learned

Trial Judge proceeded on the premise that since substituted service had already been effected on the defendant no. 1/appellant prior to passing of the preliminary decree, further service on the said defendant was dispensed with. Thus, no service ever came about inasmuch as the defendant no. 1/appellant is concerned.

7. Learned counsel appearing for the plaintiffs/respondent nos. 1 to 3 contends that it would be evident from several orders, in particular Order Nos. 45, 46, 47, 57 and 58, passed during final decree proceedings that the contesting defendants had filed their *hazira* through their learned advocate.

8. Learned counsel thus submits that obviously, by referring to the appearance of the "contesting defendants", the learned Trial Judge must have included defendant no. 1/appellant as well.

9. In view of the appearance of the appellant at the final decree proceedings, although further service after the preliminary decree was waived on the said defendant, it is evident that such service was effected at the initial instance, prior to passing of the preliminary decree; otherwise, in view of there being no further service at the final decree stage, there could not have been any

appearance on the part of the defendant no. 1/appellant in the suit.

10. Learned counsel appearing for the plaintiffs/respondent nos. 1 to 3 seeks further to argue that there is apparent discrepancy in paragraph nos. 12 and 14 of the condonation application. Whereas the appellant has stated therein that only in the month of August, 2024, the appellant learnt about the present partition suit i.e. Title Suit no. 16 of 2013 and of a subsequent partition suit initiated by the plaintiffs, bearing Title Suit no. 124 of 2024, it is found that the certified copies of the impugned decree and order sheets of the suit were obtained on August 20, 2024.

11. It is submitted that the allegation, that the appellant came to know about the suit only in the month of August, 2024, is belied by the date of application for such certified copies, which is evident from the certified copies themselves to be August 1, 2024 i.e. the very first day of the said month.

12. In view of such discrepancies, it is submitted that the appellant is trying to take undue advantage of the initial error in the mention of the current address of the appellant in the plaint,

although the permanent address of the appellant at Bankura, which is never disputed but is also reflected in the cause title of the present appeal, was one of the addresses where service was also effected.

13. Learned counsel for the appellant contends in reply that the general recording in the orders relied on by the plaintiffs/respondents, to the effect that the defendants/contesting defendants have filed their *hazira*, does not specifically mention the defendant no. 1/appellant having filed his *hazira*.

14. Thus, there is considerable doubt as to whether the defendant no. 1/present appellant ever entered appearance in the suit or it was the other defendants to whom the learned Trial Judge was referring in the orders in question while recording the filing of *hazira*.

15. It is further reiterated that in view of wrong mention of the current address of the appellant, where the appellant has been residing at the relevant period, the summons could not have been served at all on the appellant.

16. Upon hearing learned counsel for the parties, it is evident that unless the trial court records are brought before this Court, the issue of whether

service of summons was effected or not on the defendant no. 1/appellant cannot be resolved. Mere reliance on the order sheet may be a bit ambiguous and risky, in view of it being recorded in certain orders that the “contesting defendants” had filed their *hazira*, but without specifically enumerating the defendant no. 1 to be one of such defendants.

17. Accordingly, in the unique circumstances of the case, we find that the trial court records are necessary even for adjudication of the condonation application.

18. Since alleged non-service of summons is one of the integral grounds, among others, agitated in the appeals themselves as well, it would only be appropriate that the condonation application, along with the other connected applications, be heard with the appeal itself.

19. However, since a *prima facie* arguable case has been made out, this Court is of the opinion that even prior to condoning the delay in preferring the appeals, the parties ought to maintain *status quo* with regard to the subject properties as well as there should be stay of operation of the decrees impugned in both the appeals.

20. Hence, we grant stay of operation of the judgments and decrees impugned in FAT 75 of 2025 and FAT 76 of 2025, as well as direct the parties to maintain *status quo* in respect of the suit property, till disposal of CAN 1 of 2025 in both the appeals. All pending applications shall be heard finally along with the appeals.

21. The trial court records shall be brought by special messenger at the cost of the appellant, to be deposited within a week from date.

22. The appellant shall prepare and file the requisite number of composite and informal paper books for both the appeals without comparing with the records within six weeks from the date of service of notice of arrival of the trial court records on the learned Advocate-on-record for the appellant.

23. In view of appearance of the plaintiffs/respondent nos. 1 to 3 through their learned advocate, service of notice of the appeals on the said respondents is dispensed with and the appeals be treated to be ready as regards service.

24. Postal costs, requisites and written up notice form for service of notice on the other respondents than respondent nos. 1 to 3 shall be deposited by the appellant within a week from date.

25. Liberty to the parties to mention the appeals along with the connected applications for inclusion in the list for the purpose of hearing as and when the appeals are ready for hearing.

(Sabyasachi Bhattacharyya, J.)

(Supratim Bhattacharya, J.)