

08.04.2026
Court No.13
Item No.13
AP

**FAT 414 of 2025
With
CAN 1 of 2025
With
CAN 2 of 2025
With
CAN 3 of 2025**

**Sri Joydeb Chandra Khan and Anr.
Vs.
Sri Ananda Kumar Khan and Ors.**

Ms. Shohini Bhattacharya
Mr. S. Halder
Mr. A. Mullick

... For the Appellant.

Re.: CAN 2 of 2025

1. CAN 2 of 2025 has been filed seeking condonation of delay of 30 days in filing the instant appeal.
2. For the reasons stated in the application, the same is allowed. Delay in filing of the appeal is condoned.
3. Accordingly, CAN 2 of 2025 is allowed.

Re.: CAN 1 of 2025

4. CAN 1 of 2025 is an application for transposition of appellant No.2, namely Sri Subhas Dhara, as respondent since he does not wish to press the appeal.
5. Let Sri Subhas Dhara be transposed as respondent in the instant appeal.
6. Accordingly, CAN 1 of 2025 is allowed.

Re.: FAT 414 of 2025
With
CAN 3 of 2025

7. Despite service of notice, the principal respondents are not represented.

8. Affidavit of service filed in Court is on record.

9. The appellant is aggrieved by a final judgement and decree dated 4th April, 2025 passed in Title Suit No.129 of 2005.

10. The suit was for partition. The appellant is not aggrieved by the preliminary decree by which shares have been declared of the respective parties. It is the report of the Partition Commissioner appointed by the Court that the appellant was aggrieved by. Based on the said report, final decree was passed.

11. Admittedly, the report was received belatedly by the appellant, in a great deal of hurry, the objection to the report has been filed which is admittedly vague.

12. Ms. Shohini Bhattacharya, learned counsel for the appellant submits that the appellant ought to have been allowed to cross-examination the Partition Commissioner whereupon her client would have got an opportunity to challenge the division of properties effected by the Commissioner. It is submitted that the division effected by the Commissioner is unequal and disproportionate to the shares that the appellant was entitled to in the property vis-a-vis the respondents.

13. Having regard to the above, this Court is of the view that interest of justice would be subserved if the appellant is allowed to file a comprehensive and detailed objection to the commissioner's report, within a period of one month from date before the Trial Court. The appellant as well as the respondents shall be entitled to cross-examine the Partition Commissioner and his report.

14. It is only thereafter that a fresh final decree may be passed by the Trial Judge. In view of the above, the impugned judgement and final decree dated 4th April, 2025 is set aside.

15. The Trial Judge is requested to dispose of the suit by passing a final decree as expeditiously as possible preferably within a period of six months from the date of communication of a copy of this order.

16. With the aforesaid observation, FAT 414 of 2025 is disposed of. Consequently, CAN 3 of 2025 is also disposed of.

17. There shall be no order as to costs.

18. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Rai Chattopadhyay, J.)