

AD -39
Ct No.16
17.12.2025
(SSS)

FA 61 of 2023
with
CAN 1 of 2023
With
CAN 3 of 2025

Asraf Biswas and Anr.
Vs.
Nurul Islam Shaikh and Ors.

Mr. Partha Pratim Roy,
Mr. Anirban Das,
Mr. Samrat Chakraborty
....For the appellant.

Mr. Abhimanyu Banerjee,
Mr. Arnab Saha
...For the respondent no. 1.

1. The appeal arises out of a preliminary decree passed in a partition suit.
2. CAN 3 of 2025 is an application for addition of the heirs of one of the parties, who died prior to filing of the appeal. There is a dispute as to whether such death occurred during pendency of the suit in the trial court or thereafter. However, even without entering into such issue, since the proposed added parties are admittedly the heirs of one of the deceased original parties, in our view they are necessary parties in the appeal. In any event, since in an appeal arising out of a suit for partition, the fetter as to time bar does not strictly apply as the cause of action arises *de die in diem*,

we do not find any impediment in adding the omitted persons as parties to the appeal. Accordingly, CAN 3 of 2025 is allowed, thereby directing the proposed added respondents, the particulars of whom have been given in paragraph no. 2 of the application, as party respondents to the present appeal.

3. Leave is granted to the learned advocate-on-record for the appellants to incorporate the necessary amendments to the memorandum of appeal accordingly by tomorrow i.e. December 18, 2025.

4. CAN 1 of 2023 is an application for injunction. Upon hearing learned counsel for the parties, we find that questions of both fact and law are involved in the appeal and as such, a *prima facie* case has been made out for hearing the appeal on merits.

5. Since there is nothing before us to indicate clearly as to whether the appellants are in possession of any specific portion of the property, we do not find any scope of granting any injunction with regard to possession.

6. However, in order to maintain the property in *statu quo* during the pendency of the appeal, we restrain both the parties by an order of injunction from selling, transferring, alienating, and/or creating any third party interest in respect of the

suit property till disposal of the appeal. CAN 1 of 2023 is accordingly disposed of without any order as to costs.

7. In view of the proforma respondent nos. 2 to 4 having not contested the suit in the trial court, service of notice of the appeal on the said respondents is dispensed with. Service of notice on the plaintiff/respondent no. 1 is also dispensed with in view of appearance of the said respondent through his learned advocate.

8. However, insofar as the added parties are concerned, the appellants shall put in due requisites and postal costs for service of notice of the appeal on the said added respondents within a week from date.

9. The trial court records shall be brought by special messenger at the cost of the appellants, also to be deposited within a week. The Trial court shall maintain skeletal records for the purpose of continuing with the final decree proceedings. However, no final decree shall be drawn up without prior leave of this Court during pendency of the appeal.

10. The appellants shall prepare and file the requisite number of paper books within eight weeks from the date of service of notice of arrival of the trial court records on the learned Advocate for the appellants.

11.Liberty to the parties to mention the appeal for inclusion in the list as and when the same is ready for hearing.

(Sabyasachi Bhattacharyya, J.)

(Supratim Bhattacharya, J.)