

AD – 24
Ct No.16
23.03.2026
(SSS)

FAT 570 of 2025
with
CAN 1 of 2026

Raju Kabra and Anr.
Vs.
Chowdhury Md. Soukat and Anr.

Mr. Tapan Kr. Mahapatra
.....For the appellants.

1. From the Stamp Reporter's report, it transpires that the appeal is time-barred.
2. However, learned counsel for the appellants rightly points out that the impugned *ex parte* order, which culminated in a decree, was passed on July 10, 2025 whereas the certified copy for the same was applied on September 10, 2025 i.e. within the limitation period. The requisites were notified on December 6, 2025 and were deposited on December 8, 2025, on which date itself the certified copies were made ready for delivery. The appeal was presented before this Court on December 23, 2025. Thus, the appeal was preferred within limitation.
3. Although the certified copies of the impugned final decree of partition and the Commissioner's

report (which is a part of the final decree) were filed subsequently, in view of the amended provisions of Order XLI of the Code of Civil Procedure, the appeal cannot be treated to be time-barred since a copy of the judgment (ex parte order) was filed along with the memorandum of appeal; at the worst, the appeal was defective at its inception, which has subsequently been cured by filing of the certified copies of the final decree and the Partition Commissioner's report.

4. Accordingly, the application is taken up for hearing.

5. During arguments, it transpires that the plinth of challenge to the final decree of partition is the alleged dearth of title of the plaintiffs/respondents, since the defendants/appellants allege that the plaintiffs did not have any title left with them after having transferred the suit property in favour of third parties prior to filing of the partition suit.

6. However, it appears that no challenge has been preferred by way of an independent appeal against the preliminary decree of partition, whereby the title of the parties was declared along with their respective shares in the suit property.

7. Thus, the declaration of title and shares of the parties stand admitted as on this date. In such

view of the matter, it cannot be said that a *prima facie* case has been made out in the present appeal, in the absence of any challenge to the preliminary decree.

8. During the hearing, learned counsel for the appellants seeks an adjournment and the liberty to file an appeal against the preliminary decree. However, in the event the appellants are entitled in law to file any such appeal at this juncture, nothing prevents the appellants from doing so without the blessings of any liberty by the Court in that regard.

9. In any event, such appeal would also be time-barred by now.

10. Be that as it may, since learned counsel seeks to prefer an appeal, with an accompanying application for condonation of delay, against the preliminary decree, let the matter go out of the list for the present with liberty to mention for inclusion in the list as and when such appeal and application are filed.

(Sabyasachi Bhattacharyya, J.)

(Supratim Bhattacharya, J.)