

**CIRCUIT BENCH OF CALCUTTA HIGH COURT
AT JALPAIGURI**

15.12.2021
Item No.9
Court No. 01
sg

FMA 1 of 2021

Sri Shyam Sundar Paul
Versus
Sri Goutam Poddar & Ors.

None appears on behalf of the appellant nor any accommodation is prayed for on his behalf.

On the earlier occasion the appellant was also not represented.

The instant appeal is directed against the judgment and order dated March 17 2020 passed by the 1st Court of learned Additional District Judge, Siliguri, District- Darjeeling in Title Appeal No. 10 (7) of 2014.

The learned Civil Judge (Junior Division) Siliguri, District- Darjeeling by the order no. 23 dated May 27, 2014 dismissed the plaint of the Title Suit No. 147 of 2010 under Order VII Rule 11 of the Code of Civil Procedure holding that the suit is hit by Section 4(1) of the Benami Transaction (Prohibition) Act, 1988.

The Appeal Court below by the order under challenge in the present appeal has reversed the said judgment and order of the learned Trial Judge and directed the trial of the said suit.

The appellant has preferred the instant

Miscellaneous Appeal against the said order of the Appeal Court below treating it as an order of remand under Order XLI Rule 23 of the Code.

The Appeal Court below by the order impugned has dismissed the application under Order VII Rule 11 of the Code filed by the defendants and directed the learned Trial Judge to decide the suit on merit, such an order is not an order of remand.

An order dismissing an application under Order VII Rule 11 of the Code is not open to appeal.

In this context it is relevant to refer a Division Bench judgment of our Court in the case of **Amal Chandra Mondal -Vs- Anita Biswas & Anr. reported in (2006) 2 Cal LJ 180.**

FMA 1 of 2021 is **dismissed** as misconceived.

This order shall be communicated to the Stamp Reporter for further reference.

(Biswajit Basu, J.)

(Soumen Sen, J.)