

FMA 3198 of 2015
with
CAN 1 of 2014(Old CAN No. 6634 of 2014)

Mayarani Sarkar
Vs.
Jitendra Nath Adhikary & Anr.

Mr. Pinaki Ranjan Mitra
Mr. Ashim Kumar Roy
... For the Appellant

In spite of service of notice the respondents are not represented.

The appeal is arising out of an appellate order by which the suit was remanded directing the trial court to frame an issue as regards defects of the parties.

Mr. Pinaki Ranjan Mitra, learned counsel representing the appellant has drawn our attention to the part of the judgment of the trial court where this issue was raised and decided by the trial court, although no separate issue was framed with regard to the defects of the parties.

Since the parties have already adduced evidence and the contention of the defendants that the suit is bad for defects of the parties and the deity, Radha Gobinda Jew, has not been impleaded despite the fact that the suit property belonged to the deity, the order of remand unsustainable. Accordingly, the impugned judgment of the appellate court is hereby set aside.

The appellate court is directed to hear the appeal afresh and write a fresh judgment after giving an opportunity of hearing to the parties. The appeal should be disposed of on the basis of the trial court's record preferably within a period of four months from the date of communication

of this order and as per the convenience of the appellate court.

On such consideration the appeal being FMA 3198 of 2015 is disposed of along with CAN 6635 of 2014.

There will be no order as to costs.

Registrar Administration (L & OM) is directed to communicate this order to the Civil Judge, Senior Division, Birbhum in connection with Title Appeal No. 23 of 2007 for doing the needful.

(Uday Kumar,J.)

(Soumen Sen, J.)

