

14-06-2023
Court No.1
Sh/20.

**In The High Court At Calcutta
Jalpaiguri Circuit Bench**

**FAT 7 of 2023
With
CAN 1 of 2023
With
CAN 2 of 2023.**

Kalipada Das & Anr..
-Vs-
Haripada Das & Ors.

Mr. Kushal Chatterjee,
Mr. Avrojoyti Das,
Ms. Pratusha Dutta Chowdhury,
Mr. Rajdeep Das.

..For the Appellants.

In spite of service upon the learned advocate representing the respondents, the respondents are not represented.

The appeal is arising out of a judgment passed by the learned Civil Judge Senior Division, Siliguri dismissing the suit for partition on the ground that the plaintiffs have failed to adduce evidence. It appears that an application has been filed on that date for examination of the plaintiff on commission as the plaintiffs is unable to ply stairs and he is having an disability certificate. In any event the trial court could not have dismissed the suit without considering the evidence on record and decide the suit on the basis of the available evidence. It seems that the suit was dismissed as the plaintiff in spite of giving opportunities did not appear and give evidence.

Accordingly, we set aside the judgment and decree of the learned Civil Judge Senior Division,

Siliguri and we request the learned Judge to fix a firm date for evidence of P.W.1 and in the event the P.W.1 fails to appear on the date fixed to close the evidence and fix the suit may be for argument and dispose of the suit on merits as expeditiously as possible.

The appeal and the connected application are disposed of without, however, any order as to costs.

(Raja Basu Chowdhury,J.) (Soumen Sen, J.)