

12th November,
2024
(AK)
25

**F.A. 115 of 2019
IA No: CAN 1 of 2019
(Old No: CAN 7215 of 2019)
CAN 2 of 2023**

Pijush Kanti Bose
Vs.
Tapan Kanti Bose and others

Ms. Shebatee Datta
Ms. Poulami Roy
...for the appellant/defendant.

Mr. Abhisek Banerjee
...for the respondents.

1. Heard learned counsel for the parties.
2. The present appeal has been preferred against a preliminary decree passed in a partition suit. The defendant is the appellant before this court.
3. It is contended by learned counsel for the defendant that the learned Trial Judge acted erroneously in holding that the defendant is the owner of undivided 1/8th share of the suit property whereas the findings in the judgment clearly indicate that the share of the defendant should have been declared as 3/16th.
4. Thus, there is a contradiction between the narrative in the finding portion and the conclusion of the judgment.

5. Learned counsel for the plaintiffs/respondents agrees to the said submission.
6. It transpires that the parties are consensus *ad idem* to the extent that the learned Trial Judge committed a palpable error apparent on the face of the judgment to the extent that the share of the defendant ought to have been declared as 3/16th instead of 1/8th.
7. It is also pointed out by learned counsel for the respondents that Exhibit-E has been recorded in the impugned judgment as Deed of Gift No.3542/2004 whereas it should have been recorded as 3542/2005.
8. Since the parties agree on such count and we are convinced from a perusal of the materials-on-record and the other portions of the impugned judgment that the aforesaid errors are apparent on the face of record and need to be corrected, instead of a prolonged hearing, we decide to dispose of the appeal in the following manner:
 - i) FA 115 of 2019 is partially allowed, modifying the impugned preliminary decree to the effect that the share of the defendant should be read as “3/16th” instead of “1/8th”.
 - ii) Secondly, the recording in the impugned judgment to the effect that Exhibit-B is Deed

of Gift No.3542/2004 should be read as Deed
of Gift No. 3542/2005.

9. The impugned judgment and decree is modified accordingly.
10. A decree be drawn up in terms of the above.
11. The records be sent down immediately by special messenger, costs of which shall be deposited by the respondents within a week from date.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)