

21.05.2025
Court No.1
Item No.13
pk/AP

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

FAT 2 of 2024

**Utpal Kundu
Vs.
Uttam Kundu**

Mr. Bikramaditya Ghosh
Mr. Debojit Kundu

... For the Appellant.

1. Despite repeated service, respondent is not represented today. Affidavit of service filed in Court today is taken on record.

2. The instant appeal is directed against a judgment and order dated 29th January, 2024 passed by the Civil Judge (Senior Division), Jalpaiguri. The suit was for partition. The suit was dismissed on the ground that one shop room comprising of 132 sq. ft. was not included by the plaintiff as ejmali property of the father of the parties.

3. Mr. Ghosh, learned counsel for the appellant submits that the said shop room was already conveyed by the father during his lifetime to the plaintiff/appellant. This has been deposed by the appellant in the trial. Since the defendants in the suit have challenged non-inclusion of the said shop room

in their written statement, a specific issue ought to have been framed by the Trial Court on this score.

4. It is only if such issue is framed that the parties could not only led evidence but also advanced arguments giving an opportunity to the Trial Judge to pronounce thereupon i.e. as to whether the said shop room comprising in 132 sq. ft. could or should not have been part of the hotchpot of the properties of the father of the parties.

5. This Court is of the view that impugned judgment is liable to be set aside. The matter is remanded back to the Court below to frame an additional issue as to whether the shop room comprising of 132 sq. ft. under the D.I. Fund was transferred to the plaintiff by his father during his lifetime.

6. The Court below shall consider the matter afresh if the parties wish to lead any fresh evidence on the said issue, they may be permitted to do so. The witnesses already deposed in the suit may be once again recalled and re-examined by the Trial Court.

7. The Trial Court is requested to take up the matter and dispose of the suit as expeditiously as possible. As a matter of abundant caution, the Trial

Court may consider granting leave to the parties to amend pleadings before evidence is led.

8. The suit is restored to its file of the Civil Judge (Senior Division) at Jalpaiguri.

9. With the aforesaid observations, the appeal is disposed of.

10. Consequently, all connected pending applications, if any, are also disposed of.

11. There shall be no order as to costs.

12. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)