

(1910) 12 CAL CK 0004

Calcutta High Court

Case No: None

Nabin Chandra Sarma and
Others

APPELLANT

Vs

Sheikh Amir and Others

RESPONDENT

Date of Decision: Dec. 22, 1910**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 31 Rule 1, 115

Citation: 9 Ind. Cas. 132**Hon'ble Judges:** Chitty, J; Caspersz, J**Bench:** Division Bench

Judgement

1. This is a Rule, at the instance of the plaintiffs, calling on opposite party (defendants) to show cause why the order of the Sudder Munsif of Sylhet, dated the 4th of May, 1910, in Title Suit No. 700 of 1909, dismissing the plaintiffs' suit should not be set aside. Cause is shown. The plaintiffs' suit was u/s 9 of Act I of 1877. In the heading of the plaint, the plaintiffs' names are given in their personal capacity, but in the body of the plaint the fact is disclosed that the land in suit belongs to an idol Mangal Chandi, and that the plaintiffs hold it as shebait, that is, in a representative capacity. No objection on this score was taken by the defendants until the case came on for hearing, when it was contended that the suit, as framed, was not tenable. The Munsif has given effect to that contention and dismissed the suit.

2. On behalf of the defendants, it is urged that this is not a matter over which this Court has jurisdiction within the terms of Section 115 of the Code of Civil Procedure. Our attention has been invited to the decision of the Privy Council in Amir Hassan Khan v. Sheo Baksh Singh 11 L.I.A. 237 : 11 C.6 where it was decided that a Court disposing of a suit, over which it had jurisdiction, cannot, only on the ground that it has arrived at a wrong decision, be said to have exercised its jurisdiction illegally or with material irregularity. There are numerous cases in question arising on Section 115 of the Code, and it is not always easy to draw a clear line between the illegal

exercise of jurisdiction and a mistake of law. We think, however, that, in the present instance, the Munsif has acted in the exercise of his jurisdiction with material irregularity; He seems to have regarded it as a matter of course that the plaintiffs were suing in their representative capacity. They did not purport to do so, if we look only to the heading of the plaint. In this connection, we may perhaps refer to the express provision of law embodied in Order XXXI Rule 1 of the Code, which runs thus: In all suits concerning property vested in a trustee, executor or administrator, where the contention is between the persons beneficially interested in such property and a third person, the trustee, executor or administrator shall represent the persons so interested, and it shall not ordinarily be necessary to make them parties to the suit. But the Court may, if it thinks fit, order them or any of them to be made parties."

3. The Munsif ought to have given, the plaintiffs an option of proceeding with the suit, as it was in their personal capacity, or with the addition of the idol Mangal Chandi. That was the option of the plaintiffs, and they should have been permitted to exercise it. The Munsif should now give the plaintiffs sufficient time to consider their position and proceed with the suit, as originally framed, or after correction of the heading, or after correction of any passage in the body of the plaint, as they may be advised to make. The matter cannot be disposed of in the summary way that the Munsif has done on an objection taken at the last moment when the case came on to be heard.

4. We, therefore, make this Rule absolute, set aside the order of the Munsif, dated the 4th of May 1910, and direct him to dispose of the suit in accordance with law, having regard to the instructions we have given.

5. In the circumstances, we give no costs of this Rule.