(1920) 07 CAL CK 0050

Calcutta High Court

Case No: None

Kadir Buksha Mia		APPELLANT
	Vs	
Raichernessa Shahebani and Others		RESPONDENT

Date of Decision: July 1, 1920

Citation: 62 Ind. Cas. 766

Hon'ble Judges: Walmsley, J; Buckland, J

Bench: Division Bench

Judgement

1. This is a suit for accounts brought by the owners of a three-quarters anna share in a certain Zemindari against the owners of a 2 1/2 annas share. The other co-sharers who have an interest of 12 3/4 annas were not parties to the suit. In November 1909, there was an arrangement amongst all the co sharers by means of a registered instrument, whereby it was agreed that the defendant should manage the property of his co-sharers.

2. The plaintiffs have sued for accounts on the basis of that document.

3. The principal point taken in this appeal is that the other co-sharers ought to have been made parties, on the principle that where an agent has to account to more than one principal, they must all sue, and that he is not liable to render separate accounts in separate suits to each of his principals to whom jointly he is accountable. This proposition, I think, is sound. The learned Vakil for the plaintiffs relies upon the terms of the document, the material portions of which are stated in paragraph No. 4 of the plaint. But the document does not help them at all. They say that they are entitled to maintain this suit because the defendant agreed to make over to each co-sharer his share of the profits, But more than once in the same paragraph it is provided that in the event of the defendant not complying with the terms of the clause, he will be liable to the co-sharers. It is unnecessary to refer to the other points in the case. This point is sufficient to dispose of it. The learned Vakil on behalf of the plaintiffs has not asked that the other co-sharers should be added

as parties. No application of that kind has been made and it is not, therefore, necessary to consider whether in a ease such as this the defeat of want of parties may so be cured. In the circumstances, we think it is quite clear that the suit is not maintainable by the plaintiff alone and should, therefore, be dismissed.

4. This point was not taken, it is to be observed, either in the written statement or in the first appeal, nor does it find a place in the grounds of appeal to this Court. Ordinarily we should hesitate to allow grounds to be taken at this late stage, but we think that it is necessary to do so in this case in the interest of justice; not to do so opens out an endless vista of litigation.

5. We decree this appeal and dismiss the suit. The order of the lower Appellate Court as to costs will remain undisturbed and in this Court each side will pay its own costs.

Walmsley, J.

6. I agree.