

Sheikh Faizu Vs. Sheikh Doman

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Court : Kolkata

Decided On : Jun-27-1913

Reported in : AIR1914Cal215,25Ind.Cas.536

Judge : Lawrence Jenkins, C.J. and ;Asutosh Mookerjee, J.

Appellant : Sheikh Faizu

Respondent : Sheikh Doman

Judgement :

1. This a suit whereby one; of many sharers claims a declaration of his exclusive right to certain property. He has omitted to join his sisters and his mother who apparently are his co-sharers. There is apt to be some sinister motive in attempts of this kind, and this case does not, in our opinion, fall within Order I, Rule 9, of the present Civil Procedure Code. We say this because Order I, Rule 9, did not apply to the suit at the time when it was instituted, but Section 31 of the Code of 1882 which did not contain a saving clause in favour of non-joinder. But more than that, on the merits it appears to us that the plaintiff is not a person who is entitled to the declaration that he seeks, first, because he is not exclusively entitled to the property, and secondly, because it was wrong to have omitted to join his co-sharers.

2. We must, therefore, set aside the judgment of Mr. Justice Carnduff and restore, the decree of the lower Appellate Court. The appellant is entitled to his costs of

both appeals in this Court.

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