

Hari Narayan De Vs. Hari Bhusan De and ors.

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SooperKanoon Citation : sooperkanoon.com/879752

Court : Kolkata

Decided On : Jan-22-1924

Reported in : AIR1925Cal574a

Appellant : Hari Narayan De

Respondent : Hari Bhusan De and ors.

Judgement :

Richardson, J.

1. This is an application on behalf of the defendant in the suit for leave to appeal to His Majesty in Council against the judgment and order of the High Court, dated the 20th June, 1923, and the question is whether the order is or is not a final order within the meaning of Section 109 of the Code of Civil Procedure.

2. The plaintiffs and the principal defendant are brothers. The latter, the eldest brother, is the shebait of certain debutter properties. The plaintiffs make certain charges against him and seek to remove him from his office and to force him to account for his dealings with the trust funds.

3. The learned Subordinate Judge in the trial Court dismissed the suit not on the merits, but on the preliminary point that the plaintiffs have no locus standi to sue. The High Court reversed the decree of dismissal and remanded the suit for further hearing.

4. The order of the High Court appears to be a mere order of remand made under Order 41, Rule 23, of the Code of Civil Procedure, and, if so, it is an order of an interlocutory and not of a final character. It is said that the learned Judges of this Court have finally decided that the plaintiffs have a locus standi to sue, but as I understand the judgment, all that the learned Judges have decided is that the plaintiffs have prima facie sufficient interest to entitle them to an investigation or a fuller investigation of the case which they make, and that the facts have not been sufficiently ascertained to justify the dismissal of the suit on the preliminary point of locus standi whatever may be the precise meaning of that expression. '

5. So far as I can see, no final decision has as yet been arrived at as to the relative position of the principal parties or as to the liability of the defendant to render accounts to the plaintiffs. In my opinion the application should be refused with costs, 5 gold mohurs.

Sanderson, C.J.

6. I agree.