

(1922) 02 CAL CK 0017
In the Calcutta High Court

Amulya Sundari Dassya

APPELLANT

Vs

Syama Sundar Saha and Others

RESPONDENT

Date of Decision : 27-02-1922

Acts Referred:

Citation : AIR 1923 Cal 316 : 68 Ind. Cas. 607

Hon'ble Judges : Greaves, J; Ghose, J

Bench : Division Bench

Judgement

1. This Rule was granted at the instance of the plaintiff, who is a widow, to vacate the order of the Subordinate Judge directing her to give security for costs in a sum of Rs. 500. The suit is for dissolution of partnership, for accounts and for recovery of the plaintiff's stridhan property. The only question that arises for our consideration in this Rule is whether this is a suit for payment of money within the provisions of Order XXV, Rule 3, Civil Procedure Code. Apart from the partnership, properties consist of Immovable properties. On behalf of the opposite party it is stated that any decree that results in the plaintiff's favour must be a decree for money and that, consequently, the suit must be deemed to be one for payment of money within Order XXV, Rule 3, Civil Procedure Code. There is no doubt that in this Court a suit for ornaments has been held to be a suit for money within the meaning of Order XXV, Rule 3. We have also been referred to the case of Sonabai v. Tribhowandas Narotamdas (1) where it was held that a suit by a widow claiming to be a reversionary heir was a suit for money within the sub section even though some portion, a smaller portion of the claim, was in respect of moveables. Now, we have looked into the other decision which was referred to in the judgment of the First Court in that case and Sir Lawrence Jenkins, in delivering the judgment of the suit, stated that the suits before him were not exclusively for money but would, each, result in a decree for money on the relief sought. But even so, we do not think that the present suit falls within the sub-section, which involves the taking of partnership accounts, dissolution, of partnership and so on, I can quite understand where the main claim is one for money and other relief is only incidentally sought that a Court

may come to the conclusion that the suit is one for money within the meaning of the sub-section. But speaking for myself, I am not inclined to extend the sub-section so as to cover a suit of the nature of the present suit. In the result, we think that the suit does not fall within Order XXV, Rule 3 and that it is not a suit for payment of money. The order of the Subordinate Judge is, accordingly, discharged with costs-hearing fee two gold mohurs.