

(1933) 01 PAT CK 0014

In the Patna High Court

Mt. Kuader Kuer and Another

APPELLANT

Vs

Lachman Prasad Sahu and Others

RESPONDENT

Date of Decision : 23-01-1933

Acts Referred:

Citation : AIR 1933 Patna 644

Hon'ble Judges : James, J

Bench : Division Bench

Judgement

James, J.—In partition Suit No. 520 of 1919 in the Patna District there was a decree based on the award of arbitrators by which Babu Lachman Prasad was to pay Rs. 25 monthly to Mt. Radha Kuer, the mother of Lachman Prasad's deceased nephew, and Rs. 25 also to the widow of the nephew. In 1932 the two widows joined in suing Babu Lachman Prasad for arrears of maintenance, praying at the same time for permission to sue in forma pauperis. Their application was rejected by the Subordinate Judge of the Second Court of Patna on the ground that as the causes of action were distinct separate suits should have been instituted. The widows pray for revision of that order.

2. It is argued on behalf of the petitioners that a joint suit is governed by the provisions of Order 1, Rule 1, Civil P.C., and that therefore the petition should not have been rejected on the ground that the application was defective in law. Mr. Baldeva Sahay on behalf of the opposite party suggests that these separate claims for maintenance are essentially different causes of action, since one claims as the mother and the other as the widow of Babu Janak Prasad; but actually the basis of the claims is the decree in the partition suit; and it does not appear to be necessary to go behind that in order to ascertain on what grounds that decree may have been passed. Order 1, Rule 1, Civil P.C., provides that:

All persons may be joined in one suit as plaintiffs in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if such persons brought separate" suits, any common question of law or

fact would arise.

3. It is open to the Court under Rule 2, Order 1 to order separate trials where it appears that the joinder of plaintiffs may embarrass or delay the trial; but no ground of that nature has been taken by the learned Subordinate Judge, who has indeed suggested that separate suits should be instituted and that they should be treated as analogous, that is to say, they should be first instituted separately and then should be consolidated.

4. It does not appear that this application is defective in law; the order of the Subordinate Judge is therefore set aside, and the application under Order 33, Rule 1, is remanded to him for disposal on the merits. The petitioners are entitled to their costs in this Court; hearing fee one gold mohur.