

**Jadab Gobinda Singh and ors. Vs. Anath Bandhu Saha**

**LegalCrystal Citation :** [legalcrystal.com/886107](http://legalcrystal.com/886107)

**Court :** Kolkata

**Decided On :** May-17-1909

**Reported in :** 5Ind.Cas.998

**Judge :** Sharf-ud-din and ;Coxe, JJ.

**Appellant :** Jadab Gobinda Singh and ors.

**Respondent :** Anath Bandhu Saha

**Judgement :**

1. The defendants in this case were originally tenants jointly under the plaintiff and his co-sharers. The plaintiff and his co-sharers partitioned their property, and the result was that some portions of the holdings of the various tenants fell into the plaintiff's share and others into the shares of his co-sharers. The plaintiff accordingly sued for apportionment of the rent. The Munsif gave him a modified decree. But on appeal to the District Judge, he noted that it was admitted on behalf of the plaintiff that all the co-sharer proprietors, and also some other persons who were interested in the land, had not been made parties. He, therefore, remitted the suits to the Munsif, with a direction to make these persons parties and to take certain other action.

2. Two of the defendants have appealed to this Court, and it is argued on their behalf that this order of remand was illegal under Section 564 of, the old Code. It may be conceded; that the Munsif did not dispose of the suit upon a preliminary point, for this question, whether all the co-proprietors had been made parties, does not appear to have been raised before him. But the order of the District Judge directing the addition of parties is an order upon a point which is necessarily preliminary to the proper decision and trial of the suit.

3. As against the added parties, the proceedings begin only on the service of summons, and they are, we think, entitled to have their case investigated and decided by the Munsif. We think, therefore, that the order of the District Judge is not illegal, and in this view we are supported by the decision in the case of Habib Bakhsh v. Daldeo Prasad 23 A. 167.

4. The appeals are accordingly dismissed with costs.