(1907) 05 AHC CK 0004

Allahabad High Court

Case No: None

Beti Jeo		APPELLANT
	Vs	
Sham Bihari Lal		RESPONDENT

Date of Decision: May 17, 1907

Citation: (1907) ILR (All) 574

Hon'ble Judges: George Knox, Acting C.J.; Richards, J

Bench: Division Bench

Final Decision: Allowed

Judgement

George Knox, Acting, C.J. and Richards, J.

The only question which arises in this appeal is whether the legal representative of a deceased judgment-debtor is entitled to continue an application made by her predecessor in title u/s 108 of the CPC to set aside an ex parte decree. It is urged on behalf of the respondent that under the ruling of Janki Prasad v. Sukhrani (1899) All. 274, the legal representative has no such right. In that case it was held that where a defendant had died after an ex parte decree had been made, his personal representative could not apply u/s 108 because the right given u/s 108 is a right personal to the defendant and does not pass to his representative. This decision was considered by the Calcutta High Court in the case of Ganoda Prasad Roy v. Shib Narain Mukerjee ILR (1901) Cal 33. The Court would naturally loan toward giving as wide a construction as possible to Section 108 so as to give the benefit conferred by that section on the defendant to his representative to contest the decree passed ex parte against the deceased. The case differs from the case of Janki Prasad v. Sukhrani, because in the present case the application was made during the life-time of the deceased defendant to set aside the decree. She died before any order could be made and the decree-holders gave notice to the present appellant and, in that sense, themselves brought her on to the record. Under these circumstances it is unnecessary to say anything more upon the authority cited in support of the respondent''s proposition than that it does not apply to the present case. We allow

the appeal, set aside the order of the Court below, and send the case back to the Court below for proceeding according to law. Costs will abide the event.