

Husaini Begam Vs The Collector of Muzaffarnagar

Court: Allahabad High Court

Date of Decision: Nov. 11, 1895

Citation: (1896) ILR (All) 86

Hon'ble Judges: John Edge, J; Burkitt, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

John Edge, Kt., C.J. and Burkitt, J.

In this appeal an application was presented on behalf of the Collector of Muzaffarnagar to add one

Kishori Lal as a respondent to the appeal. The application was made on the 6th of May 1895. It is resisted on behalf of Kishori Lal, who objects

to being made a party to the appeal by being brought upon the record. The decree under appeal was obtained by Husaini Begam on the 7th of

June 1892. It appears that that decree was assigned to Kishori Lal on the 11th Of June 1892. On the 17th of September 1892, Kishori Lal's

name was substituted for the decree-holder's in the Court below. The Collector had notice of these proceedings. This appeal on behalf of the

Collector from that decree was presented in this Court on the 29th of October 1892, and was admitted on the 14th of November following,

Husaini Begam being named in the memorandum of appeal as the respondent. Owing to the gross negligence of some one, and although the

Collector was aware that Kishori Lal's name had been substituted in September 1892, no steps were taken until May 1895, to make Kishori Lal

a party to the appeal. It is not for us to indicate with whom the blame rests. We are now asked to add Kishori Lal's name, and we are asked to

do so u/s 372 of Act No. XIV of 1882. It is very doubtful whether this section applies at all to this case. The devolution of interest here did not

take place pending the appeal, it took place after the decree in the Court below and before the memorandum of appeal was presented to this

Court. We are aware that under certain circumstances the term ""suit"" includes not only the proceedings in the first Court, but the proceedings in the

appeal and up to final execution; but it appears doubtful to us whether the words ""pending the suit"" in Section 372 can be construed to mean at any

time from the commencement of the suit until its final determination on appeal, if there is an appeal. A reference to Section 582 seems to make it

obvious that a suit u/s 372 does not, in that section, and as it stands alone, include an appeal, as it is by Section 582 that a Court is entitled to read

the word ""suit"" where it appears in chapter XXI as an appeal. Further it is only in proceedings arising out of the death, marriage or insolvency of

parties that Section 582 enables a Court in an appeal to read the word ""suit"" where it occurs in chapter XXI as an appeal. The devolution of

interest in the present case did not arise on a death, or on a marriage or an insolvency.

2. Whether Section 372 applies or not, Kishori Lal, who is the only person apparently at present interested in maintaining the decree, objects to

being now made a party to this appeal. As the assignee of Husaini Begam, he would be entitled to support the decree in her name, but as he

objects to being brought upon the record now, we dismiss his application. The appeal will now be heard.