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Bhairab Chandra Koley and Another Vs Kali Charan Dhara and Others

None

Court: Calcutta High Court

Date of Decision: June 30, 1920

Citation: 61 Ind. Cas. 106

Hon'ble Judges: Walmsley, J; Buckland, J

Bench: Division Bench

Judgement

Walmsley, J.

This appeal is preferred by the plaintiffs, and it arises out of a suit which they brought for declaration of their title to four plots

of land, for recovery of possession and for mesne profits. There were three principal defendants and they filed a joint written statement in which

they stated that defendant No. 1 had taken settlement of plots Nos. 1 and 2, and defendants Nos. 2 and 3 of plots Nos. 3 and 4. The first Court

decided the suit in favour of the plaintiffs and gave them a decree. The three defendants preferred an appeal; but before the appeal was heard

defendant No 1 died and no steps were taken to bring his legal representative on the record. The learned Subordinate Judge, however, although

he noticed this fact, decreed the appeal in full and dismissed the plaintiffs suit. The plaintiffs now urge that, so far as plots Nos. 1 and 2 are

concerned, that is the plots of which, according to the written statement, defendant No. 1 took settlement, the learned Judge ought not to have

reversed the decree of the first court but he should have held that the appeal with regard to those plots had abated. The defendants Nos. 2 and 3

are represented in this Court, and the learned Vakils who appear on their behalf say that they have no objection to the restoration of the Munsif's

decree so far as it relates to plots Nos. 1 and 2. I think that this should be done and the order will be, that the plaintiff"s title is declared so far as

plots Nos. 1 and 2 are concerned. But in accordance with the judgment of the lower Appellate Court their claim is dismissed with regard to plots

Nos. 3 and 1. With regard to costs, there should be no costs awarded to the plaintiffs in this Court. If the learned Subordinate Judge had passed a

proper order so far as defendant No. 1 was concerned, the order as to costs would have been that the defendants Nos. 2 and 3 would get one-

half of the costs in the lower Appellate Court and in the first Court, and I think that this is the order we should make now.

Buckland, J.

2. I agree.