

(1920) 06 CAL CK 0004**Calcutta High Court****Case No:** None

Bhairab Chandra Koley and

Another

APPELLANT

Vs

Kali Charan Dhara and Others

RESPONDENT

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.