

(1992) 06 CAL CK 0002

Calcutta High Court

Case No: Ex. Ord. Suit No. 1 of 1985

Dhirendra Nath Bhowmick and
Another

APPELLANT

Vs

Robin Paul and Others

RESPONDENT

Date of Decision: June 17, 1992**Acts Referred:**

- Contract Act, 1872 - Section 19

Citation: 97 CWN 390**Hon'ble Judges:** Ajoy Nath Ray, J**Bench:** Single Bench**Advocate:** Pradip Mitra, for the Appellant; U.B. Mukherjee, for the Respondent

Judgement

Ajoy Nath Ray, J.

This is an application for substitution of the heirs and legal representatives of the original first plaintiff. The wife and one daughter of the deceased first plaintiff are already on record and the substitution is sought to be effected by bringing in two of the other daughters as plaintiffs no. 1A and 1B. The only point taken in opposition is that the cause of action did not survive the plaintiff and perished with the plaintiff altogether so that substitution itself would be a complete redundancy. In my opinion, the justice of the case would be sufficiently served by keeping the point open to be urged by the defendants at trial. On a prima facie view it does not appear that the cause of action has ultimately perished with the death of the defendant altogether. But that prima facie view would have to be tested at trial. Mr. Mitra has relied upon, amongst others. Section 19 of the Contract Act "and the case of [Pardhana Vs. Amin Chand and Others](#), for the proposition that even a cause of action arising out of a claim for avoidance of a contract allegedly induced by misrepresentation would survive the death of the wronged party. The matter would be finally gone into at trial. To hold at this stage that the cause of action could not manifestly have survived the first plaintiff and that thus the substitution applied for

is an abuse of the process of the Court would be, in my opinion, erroneous. A mere look at the claims in the plaint shows that there are declarations claimed including in respect of legal and equitable interest of a Tea Estate, as well as claims for specific delivery and return of share scripts which would, again in the prima facie view, constitute claims, the cause of action regarding which survives the death of the deceased original right-holder.

2. Under these circumstances, there will be orders in terms of prayers (a), (b), (c) and (d) of the Master's Summons dated 4th May 1992, with this addition, that the word "original" shall also be included in paragraph 45 (a) (i) of the plaint, in between the two opening words the" and "Plaintiffs". The orders are subject to the reservations of the right of defence as to non-survival of cause of action as indicated earlier. Additional written statement, if any, is to be filed within a period of 8 weeks from date hereof. Discovery or further discovery, if any, by letter within a period of 2 weeks thereafter. Inspection forthwith. The suit which appears as the third suit in the list today along with the second suit in the list, which has to be heard together with this suit, would both stand adjourned till 7th September, 1992 when those will appear at the top of the list of contested suits subject to any part heard.

Costs in the cause.