

**(1932) 05 CAL CK 0001****Calcutta High Court****Case No:** None

Kailash Chandra Das and

APPELLANT

Another

Vs

Sm. Kanchani Dassya and Others

RESPONDENT

**Date of Decision:** May 25, 1932**Citation:** AIR 1934 Cal 136**Hon'ble Judges:** M.C. Ghose, J; Guha, J**Bench:** Full Bench**Judgement**

Guha, J.

This Rule is directed against an order of the Munsif, Second Court, Dacca, dated 10th February 1932, disallowing the objections raised by the petitioners before this Court, in regard to an order for substitution of parties and for transference of defendants in a suit to the category of plaintiffs. The facts of the case giving rise to the application on which this Rule was issued, are set out in the order recorded by the Court below. Defendants 5 and 6 in the suit, who were substituted as plaintiffs on the death of the original plaintiff, Kamini Sundari Dassya one of the widows of Ishan Chandra Das, after the passing of a preliminary decree for dissolution of joint family business, and for accounts, against defendants 1 to 3 in the suit, were the ultimate reversioners after the death of defendant 3, Kanchani Dassya, the co-widow of the original plaintiff in the suit. By the order of the Court below, all these three persons, defendants 5 and 6 and defendant 3, have been made co-plaintiffs.

2. So far as defendants 5 and 6, who have been made plaintiffs are concerned, the order of the Court below appears to us to be one which should not be interfered with by us, regard being had to the subject matter of the litigation in which a preliminary decree was passed. The ultimate reversioners are recognised by Courts of law, as having a right to demand that the estate be kept free from waste and free from danger, during its enjoyment by a widow or other owner for life, a reversionary heir thus appealing to the Court truly for the conservation, and just administration

of the property, so that the corpus of the estate may pass, unimpaired to those entitled to reversion. (See the case of *Janaki Ammal v. Narayanasami Aiyar* AIR 1916 PC 117. On the face of the preliminary decree passed in favour of the original plaintiff's in the suit, which clearly touches the corpus of the estate, the order substituting the reversionary heirs, defendants 5 and 6, in the place of the original plaintiff is in accordance with the rule of law well, established now, to which reference has been made above; and the order made by the Court below in that behalf is affirmed. The question arising for consideration in regard to the substitution and transfer of defendant 3 to the category of the plaintiffs stands on a different footing. In our judgment, there was no justification for the Court below in making her a plaintiff in the suit, without any application on her part and without her consent. This part of the order made by the Court below appears to us to be wholly irregular and unsustainable and it is accordingly set aside. The Rule is therefore made absolute in part. The order of the Court below is modified in the manner indicated above. We make no order as to costs in this Rule. Let the record be sent down as soon as practicable.

M.C. Ghose, J.

3. I agree.