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**(1918) 07 CAL CK 0004**

**Calcutta High Court**

**Case No:** None

Azimuddin Mandal and Others

APPELLANT

Vs

Tara Sankar Ghose and Others

RESPONDENT

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**Date of Decision:** July 8, 1918

**Acts Referred:**

- Bengal Tenancy Act, 1885 - Section 105

**Citation:** 47 Ind. Cas. 638

**Hon'ble Judges:** Walmsley, J; Panton, J

**Bench:** Division Bench

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### **Judgement**

Walmsley, J.

These appeal are by the tenants and they arise out of proceedings u/s 105 of the Bengal Tenancy Act. The plaintiffs were the two landlords Tara Sankar and Kali Sankar. After the decision of the lower Appellate Court, Kali Sankar died leaving two sons, Asutosh a major and Sudhansu a minor. The appellants applied to have the heirs of Kali Sankar substituted and caused a notice to be issued to Asutosh calling upon him to show cause why he should not be appointed guardian of his minor brother. Asutosh did not appear. Orders were then passed by the Court that the Deputy Registrar should be appointed guardian of Sudhansu. Defendants failed to pay the costs of the Deputy Registrar, with the result that on 12th June 1918 a Bench of this Court ordered that the appeals should stand dismissed as against, the minor at the risk of the appellants. The only respondents, therefore, now before the Court are Tara Sankar, one of the original plaintiffs, and Asutosh, one of the two sons of the second plaintiff.

2. A preliminary objection is taken on behalf of the respondents that in the absence of Sudhansu the appeals cannot proceed on the ground that all the parties necessary for the determination of the case are not before the Court. It is pointed out that the case arose out of an application made u/s 105 of the Bengal Tenancy Act for settlement of fair rents and for enhancement and that such an application

must u/s 188 be made by all the landlords; but the result of what has happened in the course of the present appeals is that one of the landlords is now absent. Reference is made to the case of Bejoy Gopal Bose v. Umesh Chandra Bose 6 C.W.N. 192 at p. 196, where a somewhat similar situation arose. The Judges there held, "The decree was a joint decree in favour of all the plaintiffs, and if the defendant desired to question the correctness of that decree, he was bound to bring before the Court all the parties affected by that decree," and the appeal was dismissed as he had not done so. Another case is Tarip Dafadar v. Khote annessa 10 C.W.N. 981. A third case is Basir Sheikh v. Fade Karim Bisivas 28 Ind. Cas. 703 : 19 C.W.N. 290, It is urged on behalf of the tenants that between the case of Bejoy Gopal Bose v. Umesh Chandra Bose 6 C.W.N. 192 at p. 196 and, that of Basir Sheikh v. Fazle Karim Biswas 28 Ind. Cas. 703 : 19 C.W.N. 290 the new CPC came into force; and the difference between Order XXII, Rule 4, of the new Code and Section 368 of the old Code" is emphasized. Under the law as it now stands the words as against the deceased defendant" have been added after the words "the suit shall abate." It is also pointed out that in the case of Basir Sheikh v. Fazle Karim Biswas 28 Ind. Cas. 703 : 19 C.W.N. 290 the Judges proceeded very much on the ground that two of the plaintiffs being omitted from the appeal they would be able to execute the decree in its entirety. That is one of the reasons given. But the learned Judges also referred to the oases of Bejoy Gopal Bose v. Umesh Chandra Bose 6 C.W.N. 192 and Tarip Dofadar v. Khotejannessa 10 C.W.N. 981 which I have just mentioned, and it appears to me that those earlier cases proceeded not on the words of Section 368 but on the general principle that all the parties necessary for the disposal of the case must be brought before the Court.

3. I think, therefore, that the preliminary objection must be sustained and the appeals referred by the tenants be dismissed with costs, one gold mohur in each case.

4. The learned Vakil on behalf of the landlords intimates that he withdraws the cross-objections filed in connection with these appeals. We make no order as to costs, in the cross-objections.

Panton, J.

5. I agree.