

(1922) 08 CAL CK 0007**Calcutta High Court****Case No:** None

Midnapore Zemindary Company
Limited

APPELLANT

Vs

Ishan Chandra Chowdhury and
Others and Dayadra Nath
Bhowmik and Others

RESPONDENT

Date of Decision: Aug. 21, 1922**Citation:** 72 Ind. Cas. 479**Hon'ble Judges:** Rankin, J; Asutosh Mookerjee, J**Bench:** Division Bench**Judgement**

Second Appeal No. 2670 of 1917

1. This appeal is directed against a decree for possession and mesne profits, made in the following terms: "The plaintiffs will recover their possession of 2 annas 17 gundas 2 kara 1 kranti share in the Mehal with mense profits and interest at 6 per cent from which their share of the purchase price of Rs. 1,366-9-16-2-2 will be deducted. The plaintiffs will also be entitled to recover their costs throughout from defendant No. 1 with interest at 6 per. cent, except the costs incurred in the Court of first instance."

2. In this appeal, which has been preferred by the first defendant, the respondents are the plaintiffs. One of these plaintiffs, Taran Krishna Bhomik, died on the 4th January 1920 during the pendency of the appeal. No steps were taken to set aside the abatement within the time allowed by law; and in answer to a Rule obtained to amend the record, it was pointed out by the respondents that the Rule had been granted on a petition which contained statements substantially untrue. The Rule was thereupon discharged. The position is, that we are now called upon to set aside a decree for possession which enured to the benefit of four persons, one of these persons is dead and his representative-in-interest has not been brought on the record. In these circumstances, it is impossible for us to hear the appeal against the

decision of the District Judge. Even if the appeal were to succeed, the representative-in-interest of the deceased plaintiff would not be bound by our judgment and would be at liberty to execute the decree in its entirety as one of several joint decree-holders. The appeal has consequently become infructuous. This view accords with that adopted in the case of *Kali Dayal v. Nagendra Nath* 54 Ind. Cas. 822 : 30 C.L.J. 2171 : 24 C.W.N. 44 which follows a long line of decisions in this Court. The appeal is accordingly dismissed with costs. The cross-objection is not pressed and is, therefore, dismissed.

Second Appeal No. 790 of 1918.

3. This judgment, it is conceded, will govern the other appeal Second Appeal No. 790 of 1918 which is also dismissed with costs.