

(1924) 01 CAL CK 0012**Calcutta High Court****Case No:** None

Profulla Chandra Ghose and
Others

APPELLANT

Vs

Tara Chand Gain and Others

RESPONDENT**Date of Decision:** Jan. 4, 1924**Citation:** AIR 1925 Cal 509**Hon'ble Judges:** Suhrawardy, J**Bench:** Division Bench**Judgement**

Suhrawardy, J.

A preliminary objection is taken to the maintainability of this Rule on the ground that all the necessary parties are not before the Court. In my opinion the objection ought to prevail. The suit was brought by the petitioners against 18 tenants for rent and an ex parte decree was passed in that suit. Two of the tenants applied to have the ex parts decree set aside and the Court set aside the ex-parte decree and passed the following order, "Miscellaneous case be allowed on contest; sale set aside, restore the suits in their original numbers." I observe that it was a suit for rent and under the proviso to Rule 13 of Order 9, the whole suit was restored; and in this Court a Rule was obtained only against two of the defendants who were the applicants in the Court below, and the other tenants in whose favour the ex parte decree was set aside and the suit restored, were not made parties to this Rule. The effect of this omission is that, if this petition succeeds and the order of the Court below be set aside and the suit decreed against two of the tenants, the order-restoring suit in favour of the other 16 tenants will stand. This creates an anomaly which cannot be allowed. In this view of the matter, the Rule cannot proceed and must be discharged with costs. I assess the hearing-fee at one gold mohur.

2. This order will govern the other Rule (707 of 1923) which is also discharged with costs, one gold mohur.