

(1869) 06 CAL CK 0022

Calcutta High Court

Case No: Special Appeal No. 3045 of 1868

Tarak Nath Mukhopadhyaya and
Others

APPELLANT

Vs

Shama Charan Ghosh

RESPONDENT

Date of Decision: June 30, 1869

Judgement

L.S. Jackson, J.

In this case the suit was brought against one Shama Charan, who, it appears, is the son of Prem Chand. Judgment being given for the plaintiff, Prem Chand came to the Judge's Court, and preferred an appeal describing himself as appellant on behalf of his minor son, Shama Charan. When the appeal came on for hearing before the Subordinate Judge, to whom it had been referred, it was found that the defendant Shama Charan was not a minor, but that he was of full age, and had defended the suit in person, and had in person applied to the Court below for a review of judgment. It appears that Shama Charan had, after the filing of the appeal, put in a petition, stating that the appeal had been filed by mistake in the name of his father; that he himself desired to carry on the appeal, and prayed to be made appellant. The Subordinate Judge refused to make the order requested, on the ground that there had been no mistake in the matter, that the party interested, Shama Charan, had been falsely described as a minor, and he therefore declared that the appeal be dismissed. I observe that there could hardly have been a mistake in this matter, because not merely was the appeal preferred in the name of the father, and the son described as a minor, but the vakalatnama to prosecute the appeal was executed and signed by the father. Still I do not question, but that the Subordinate Judge, if he had thought fit, and considered that the conduct of the parties made it desirable, might have ordered the record to be amended by placing the name of Shama Charan, in the place of the appellant.

2. But I think it was entirely a matter in his discretion. It cannot be said that under the circumstances, the Subordinate Judge was in law bound to make the alteration, and therefore I think the special appeal must be dismissed with costs.

Markby, J.

I am of the same opinion.