
(1912) 07 CAL CK 0042

Calcutta High Court

Case No: None

Deosaran Lal

APPELLANT

Vs

Sayedunnessa Begam

RESPONDENT

Date of Decision: July 1, 1912

Citation: 16 Ind. Cas. 58

Hon'ble Judges: Beachcroft, J; Asutosh Mookerjee, J

Bench: Division Bench

Judgement

1. We are invited in this Rule to set aside an order for amendment of a decree, made on the 4th May 1912, under somewhat novel circumstances. The suit which was commenced on the 10th May 1904, against two persons, Gajadhar Lal and Rap Lal, was decreed on the 18th July 1905, The defendants preferred an appeal. The District Judge reversed the decision of the Court of first instance and remanded the case for re-trial, as, in his opinion, the defendants were entitled to plead a set-off. The records were received back in the original Court on the 16th March 1906. On that date, the 26th April following was fixed for the hearing of the suit. The plain-tiff did not enter appearance on the date fixed; and the result was that the suit was dismissed for default. It appears that one of the defendants, Rup Lal, had died on the 11th April 1906; but this was apparently not brought to the notice of the Court at the time when the order of dismissal for default was made. On the 30th April 1906, the plaintiff applied for revival of the suit. During the pendency of that proceeding, it transpired that Rup Lal was dead; and on the 26th May 1906, the plaintiff applied for time to bring on the record the representative of Rup Lal. On the 7th June 1905 he nominated the present petitioner, Deosaran Lal, as there presentatiye-in-interest of Rup Lal, and an order for substitution was made. That order, however, was interpreted to mean that the name of Deosaran Lal was to be substituted for that of Rup Lal, only in the application for revival of the suit, and the original plaint was not amended. On the 30th June 1906, the Court made a conditional order for revival. The costs were paid as directed, and the suit was revived on the 2nd July 1906. But as the plaint had not been amended, the suit was revived against a dead man This

was not noticed either by the plaintiff or by the surviving defendant. The suit was tried out on the merits, and a decree ultimately made in favour of the plaintiff, in which the name of Rup Lal appeared as that of one of the defendants. Execution was subsequently taken out against the present petitioner as the representative of Rup Lal; but he objected, and his objection was allowed that as the decree had been made against a dead man, it bound neither the deceased nor his representative. The plaintiff then applied to the Court for amendment of the decree, and the Subordinate Judge, on the 4th May 1912, directed that the decree be amended by the substitution of the name of the petitioner, Deosaran Lal, in place of that of Rup Lal. This order is now assailed before us in our opinion, it is plain that the order cannot be supported.

2. It is clear that this is not a case for amendment of decree. The decree was in conformity with the judgment. The mistake in the decree was due to the omission of the Court to amend the plaint. When the plaintiff applied for the substitution of the representative of the deceased defendant and the order was made in that behalf, it should have been carried out, not merely in respect of the application for revival but also in respect of the original suit. The omission of the Court to take this obvious step has resulted in the absurd position that the suit has been, revived and tried out as against a dead man. The proper order to make in the event which has happened, is to discharge not only the order of the 4th May 1912, but also the decree in the suit. The plaint will be amended by the substitution of Deosaran Lal in place of Rup Lal. The plaintiff and the defendants will thus be placed in the position they occupied when the order for revival was made on the 2nd July 1906. The suit will now be re-tried in the presence of all the parties. We discharge the entire decree, and direct a re-trial of the whole suit, as otherwise complications may arise.

3. As the Rule has not been opposed, there will be no order for costs.

4. This order will also govern the other Rule No. 350V of 1912.