

(1916) 06 CAL CK 0043**Calcutta High Court****Case No:** None

Nandarani Dasi

APPELLANT

Vs

Hari Charan Gangopadhyay and
Others

RESPONDENT

Date of Decision: June 22, 1916**Citation:** 36 Ind. Cas. 29**Hon'ble Judges:** Teunon, J; Fletcher, J**Bench:** Division Bench**Judgement**

Fletcher, J.

This is an appeal from the judgment of the learned Subordinate Judge of Howrah, dated the 21st May 1915. The suit was brought by the plaintiff Nandarani Dasi, who is the widow of the deceased Rai Bahadur Kirode Prosad Pal, against two classes of defendants; first of all, against certain persons who were formerly the executors of her husband's Will and, secondly, against certain persons who had been constituted as trustees to a certain charity established by the late Rai Bahadur under a scheme settled by the District Judge under a compromise entered into between the persons who were the executors and the then guardian of the present plaintiff, she being at that time a minor. The causes of action are, first, an account against the late executors for moneys come to their hands as executors or trustees. That part of the suit has not been tried and nobody has suggested that that is not a perfectly good cause of action. The plaintiff also says that the scheme relating to the charity established by the late Rai Bahadur and settled by the District Judge was obtained by fraud and that that scheme is not binding on her. That portion of the case, the learned Judge has come to the conclusion, ought not to be tried in this suit, and, therefore, he has dismissed that cause of action apparently on two grounds; first of all, that the consent of the Advocate-General is necessary to that cause of action and that that has not been obtained and, secondly, that it would not be convenient to the Court to try that cause of action at the present stage. Of course, as regards a cause of action that has not been tried, the Court has got to be careful in the appeal

as to what remarks it makes with reference to the allegations or statements made by one side or the other. But having regard to the allegations that have been made by the plaintiff in this case, it seems to me that the learned Judge was premature in deciding that this case was one in which the consent of the Advocate-General was required. Whether the consent of the Advocate-General is required or not depends upon the facts that may be proved at the trial and I do not wish to express any opinion as to whether that consent is necessary or not. If it is necessary, the plaintiff has elected to go to trial at her own risk. Of course, she must take that risk, which may at the end prove fatal to that part of the suit, if the Court comes to the conclusion that that consent is necessary. This is sufficient to dispose of the first point taken by the learned Subordinate Judge.

2. The second point that the learned Subordinate Judge took was that it was not convenient to try those two causes of action together. On the allegations or statements that have been made to us, I do not agree in the conclusion arrived at by the learned Judge, This case against the trustees, namely, that the scheme was fraudulently obtained seems to me essentially to arise out of and form a portion of the same transaction out of which the first cause of action is said to have arisen.

3. The case that is contemplated by the Order in the Civil Procedure Code, which authorizes the Court to exclude a cause of action and direct a separate trial, is a case where the causes of action joined in the same suit are essentially of different character; such as, where the plaintiff sues upon a promissory note or a bill of exchange to recover money due and he also joins in it a case of damages for libel or slander. In such a case the Judge has the power to direct a separate trial of the two different causes of action. In this case, the facts, so far as they have been alleged by the plaintiff, seem to me to arise out of facts that are common to both the causes of action; if these facts are established I think the order of the lower Court excluding the cause of action against the trustees in the present suit should be set aside and the case should go back to that Court for the purpose of being tried and disposed of in the ordinary way. The costs of this case will be provided for in the same manner as the learned Judge of the lower Court may direct on the result of the trial.

Teunon, J.

4. I agree.