

(1917) 12 CAL CK 0022

Calcutta High Court

Case No: None

Jugai Krishna Mullick

APPELLANT

Vs

Phul Kumari Dassi and Others

RESPONDENT

Date of Decision: Dec. 19, 1917

Citation: 44 Ind. Cas. 564

Hon'ble Judges: Teunon, J; Newbould, J

Bench: Division Bench

Judgement

1. In this case one Phnl Kumari Dassi has sued as. the administratrix to the estate of her deceased husband for the purpose of having a sale of part of the estate for arrears of revenue set aside.

2. The petitioner before us one Jugal Kishore Mullick, claiming to be a son adopted to her deceased husband by Phul Kumari and being now of full age, applied to be made a party plaintiff in the suit. The application was refused by the Subordinate Judge of Alipore in whose Court the suit is pending, on the ground that the administratrix fully represented the estate and that there was nothing to show that she had interests adverse to the interests of the petitioner.

3. Here there can be no doubt that the Subordinate Judge has fallen into error.

4. In the new current year the petitioner in fact brought a suit (No. 212 of 1917) on the Original Side of this Court to recover possession from Phul Kumari and for accounts. In that suit Phul Kumari has entered appearance and while apparently admitting the factum of the adoption has pleaded that she had no valid authority from her husband to make it. Farther on the record of the present suit there are many indications going to show that she is not prosecuting the suit with due diligence.

5. But on behalf of the opposite party it is contended that neither u/s 115 of the CPC or Section 107 of the Government of India Act, 1915, are we empowered to interfere

in a matter of addition or substitution of parties. To that contention the case reported as Dwarka Nath Sen v. Kisori Lal 6 Ind. Cas. 549 : 11 C.L.J. 426 : 14 C.W.N. 703 is a sufficient answer.

6. It is next contended that Order XXXI, Rule 1, applies only when the interest of the claimant as a beneficiary is admitted or not disputed. No authority has been adduced in support of this proposition. It may be that the petitioner's title cannot be finally adjudicated in the present suit but having regard to the registered deed of 4th July 1902 and the admissions made by the plaintiff Phul Kumari from time to time, we are satisfied that the petitioner has made out a prima facie case sufficient to entitle him to be made a party to the suit. We, therefore, set aside the order complained of and direct that the petitioner be added as a party plaintiff.

7. The Rule is accordingly made absolute with costs against the plaintiff-opposite party, hearing fee three gold mohurs.