

(1917) 07 CAL CK 0047

Calcutta High Court

Case No: None

Abhoya Charan Ghosh and
Others

APPELLANT

Vs

Raj Kumar Ghosh and Others

RESPONDENT

Date of Decision: July 13, 1917

Citation: 42 Ind. Cas. 506

Hon'ble Judges: Charles William Chitty, J; Beachcroft, J

Bench: Division Bench

Judgement

1. In this case an appeal was filed in the Court of the Subordinate Judge against a decision of the Munsif on 9th August 1915. In September 1915 defendant No. 8 Amar Chaud Dutt died. No substitution was made of his heirs. The appeal was heard in July 1916 and, on 27th July, the lower Appellate Court's decree was passed. Against that decision an appeal was filed in this Court on 30th August 1916 with the name of defendant No. 8 as a party. The appellants say that they came to know of the defendant No. 8's death on 10th February 1917 when an attempt was made to serve the notices of the appeal. An application was made to the lower Appellate Court to re-hear the appeal against the heirs and legal representatives of defendant No. 8 on the ground that the latter had died shortly before the hearing of the appeal in that Court. The learned Subordinate Judge declined to entertain the application regarding it as one for, review and considering that the case being under appeal to this Court he had no jurisdiction to go into that question. We think that the learned Subordinate Judge was in error and that he should have entertained the application to substitute the heirs of defendant No. 8 on its merits. If he found on the merits of that application that the abatement against the defendant No. 8, which took place on the date of his death, ought to be set aside then he should have set it aside and brought the representatives of the deceased on the record and re-heard the appeal so far as they were concerned in their presence. We think that that is what ought now to be done. It will, of course, be open to the learned Subordinate Judge to decide whether the abatement should be set aside or not on the merits of the

application. The Rule is accordingly made absolute. We make no order as to costs.

2. Let the record be sent down at once and let the Subordinate Judge be requested to dispose of the matter as early as possible in order not to delay the hearing of the appeal in this Court.