

(1869) 01 CAL CK 0012

Calcutta High Court

Case No: Miscellaneous Special Appeal No. 485 of 1868

Matilal Bagchi and
Another

APPELLANT

Vs

Ram Chandra
GoswamiRESPONDENT

Date of Decision: Jan. 8, 1869

Judgement

Sir Barnes Peacock, Kt., C.J.

This is a very clear case. In this case a suit was brought against several defendants to recover possession of land. One of the defendants stated that he had nothing to do with the land. The other defendants claimed to be entitled to it. The defendant who stated that he had not interfered with the land, conducted his defence by a separate pleader, and incurred separate costs, and the first Court considered that, as he had made good his defence, he was entitled to a separate set of costs, and awarded one set of costs to him and another set of costs to the other defendants who claimed title, and who also succeeded in their defence. It has been held that although an Appellate Court may entertain an appeal upon the subject of costs only, still, in dealing with the decision of the lower Court, any interference upon the subject of costs ought to be exercised with discretion. It appears to me that the order of the first Court in that respect was very reasonable, and that the plaintiff, if he thought fit to sue the defendant who had nothing to do with the case, had no reasonable cause of complaint if he was ordered to pay a separate set of costs to that defendant.

2. The Judge, upon appeal, held that as all the defendants were members of the same family, they ought to have had only one set of costs amongst them. No evidence, whatever, was given to show that all the defendants were joint in estate, nor was there any evidence, as I understand, even to show what relationship existed between the several defendants. Even if they were joint in estate, some of the members of the family might have separate property.

3. Under these circumstances, it appears to me that the Judge did not exercise a sound discretion in modifying the order of the Sudder Ameen and awarding one set of costs only to all the defendants, upon the assumption that they were members of the same family, without having any regard to the circumstance that they set up separate defences of different natures. The order of the Judge is reversed with costs of this appeal and costs in the lower Appellate Court. The decision of the Sudder Ameen is affirmed.