

(1880) 04 CAL CK 0017

Calcutta High Court

Case No: None

Mohindrobhoosun  
Biswas

APPELLANT

Vs

Shosheebhoosun  
Biswas

RESPONDENT

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Date of Decision: April 8, 1880

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 32

Citation: (1880) ILR (Cal) 882

Hon'ble Judges: Wilson, J

Bench: Single Bench

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### Judgement

Wilson, J.

I do not think that there is any sufficient reason for making the order asked for. The application is u/s 32 of the Civil Procedure Code. The words of the section are as follows: "The Court may, on or before the first hearing, upon the application of either party, and on such terms as the Court thinks just, order that the name of any party, whether as plaintiff or as defendant, improperly joined, be struck out; and the Court may, at any time, either upon or without such application, and on such terms as the Court thinks just, order that any plaintiff be made a defendant, or that any defendant be made a plaintiff, and that the name of any person who ought to have been joined, whether as plaintiff or as defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions in the suit, be added."

2. In the first place this does not contemplate any application by the person proposed to be added.

3. The Court has a discretion as to whether it will act or not, and no doubt facts may be proved before it which would justify it in acting. But I do not think that any facts

have been shown which make it necessary to have the mortgagees added as parties. At this stage of the suit their presence is not necessary "to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit." The question as between the plaintiff and the defendant is, who is entitled to the property in dispute? To determine that question, it is not necessary that the mortgagees should appear; they will not be bound by any finding come to in their absence.

4. In case of a decree for partition being made, the mortgagees should have leave to come in and attend the partition-proceedings.