

(1922) 05 CAL CK 0020
In the Calcutta High Court

Abdul Aziz and Others

APPELLANT

Vs

Lakhmi Chandra Majumdar and Others

RESPONDENT

Date of Decision : 25-05-1922

Acts Referred:

Citation : 74 Ind. Cas. 545

Hon'ble Judges : Chotzner, J;Asutosh Mookerjee, J

Bench : Division Bench

Judgement

1. This is an appeal by the plaintiffs in a suit for cancellation of a sale held under the putni Regulation. The suit was decreed in the Court of first instance, Upon appeal by the two zemindars, that judgment was reversed and the suit was dismissed. The plaintiffs thereupon appealed to this Court. They joined as respond-ts three sets of persons, viz, (i) the auction-purchaser; (ii) the two zemindars, and (iii) the persons alleged to be joint tenant in the putni. During the pendency the appeal in this Court, Sarat Chandra Ghose, the executor to the estate of Saraswati Debi, one of the zemindar respondents, ed on the 10th June 1916. The plaintiffs, is now asserted, were not aware of this circumstance and the auction purchaser also the other zemindar respondent were eqally ignorant of the event. The result as that on the 31st Jan friary 1917 when i.e appeal was taken up for final disposal this Court, the hearing proceeded on the assumption that all the parties were properly presented on the record. The appeal as heard, the decree of the lower Appellate court was set aside and the case was re-landed for reconsideration. When the case rent before the District Judge, he was formed on the 20th December 1917 hat one of the zemindar defendants had led during the pendency of the appeal the High Court and that the representative-in-interest of that zemindar was not found by the order to remand made by he High Court. The position consequently was that the District Judge was called upon to hear an appeal which had been referred by the two zemindars defendants; when of whom was bound by the order of remand while the other was dead and not effected by that order. The District Judge led, in these circumstances, that the appeal could not be re-heard by him. The new he adopted was that the decree of

the lower Appellate Court as made by his predecessor had been vacated by the High Court with regard to one of the zemindar defendants, that not with regard to the other He, consequently, declined to hear the appeal and added that the decree made by the lower Appellate Court on the previous occasion stood restored in its entirety This view, it has been urged, is supported by the decision of this Court in the case of Kali Day al v. Nagendra Nath 54 Ind. Cas. 822 : 30 C.L.J. 217 : 24 C.W.N. 44.

2. On the present appeal the plaintiff have contended that if, in the opinion of the District Judge, the order of the High Court, made in Ignorance of the real facts, could not be carried out, the proper course for hi in. to follow was to intimate, the true position to this Court so as to enable this Court to determine what action should be taken in the matter. On the other hand, the zemindar respondent who was a party to the appeal on the previous occasion and is bound by the order made therein, has contended that the order of the High Court must be deemed to have been made without jurisdiction and that the District Judge was competent to treat it as a nullity. We are of opinion that this view cannot possibly be supported.

3. The fact of the death of one of the respondents to the appeal did not destroy the Jurisdiction of the Court. If this Court had been apprised of the true State of facts, no doubt, the Court would have made an order of a different description. That very circumstance shows that the jurisdiction of this Court was not ousted by reason of the death of one of the respondents. We are of opinion that the District Judge should not have regarded "the order of this Court as if it were null or void, but should have reported the matter to this Court for such action as might be deemed necessary in the events which had happened.

4. The result is that this appeal is allowed and the decree of the District Judge set aside. The case is remanded and re-called to the file of this Court so that it may be placed before Richardson, J., who is the only member, now in this Court of the Division Bench which decided the appeal on the previous occasion. It is not proper for us to consider what order should be ultimately passed in this matter. The effect of our order is to place the parties in the position which they would have occupied if the District Judge on discovery of true facts had sent back the case to this Court. There will be no order for costs.