

(1918) 06 CAL CK 0059
In the Calcutta High Court

Baksh Ali Sarkar add Ors.

APPELLANT

Vs

Sarat Chandra Rot Chaudhury and Others

RESPONDENT

Date of Decision : 05-06-1918

Acts Referred:

Citation : AIR 1919 Cal 1053 : 46 Ind. Cas. 911

Hon'ble Judges : Smither, J; John Woodroffe, J

Bench : Division Bench

Judgement

1. A preliminary objection has been raised against the hearing of this appeal. It appears that one of the respondents died some time back and his representatives have not been made parties to the appeal. The learned Pleader, who now appears for the appellants, stated to the Court on the 29th May of this year that he did not wish to proceed against the deceased respondent and the Court ordered "let the case, therefore, be placed on the list next week" It does not appear that the Court passed an order for dismissal. But such an order should follow, unless we think that this is a case in which we should accede to the prayer of the learned Pleader for the appellant that he now be given an opportunity to bring the legal representatives of the deceased respondent on the record. But having regard to the admitted facts of this case that the learned Pleader for the appellant was informed by the learned Pleader for the respondent of the death of one of the respondents and that the learned Pleader for the appellant did communicate with his client but to no effect, we think that this is not a case in which we should allow this prayer. The appeal, therefore, as regards the non-substituted respondents must be dismissed.

2. The question then is whether it can proceed as against the other respondents. I think that this appeal fails, as an appeal relating to execution of a joint decree cannot proceed against the surviving respondents alone. In these circumstances, it is not necessary to go into the appeal upon the merits. The appeal must be dismissed with costs. We assess the hearing fee at one gold mohur.