

(1920) 06 CAL CK 0055
In the Calcutta High Court

Kshetra Mohan Paddar and Others

APPELLANT

Vs

Azizullah Mea and Others

RESPONDENT

Date of Decision : 10-06-1920

Acts Referred:

Citation : 57 Ind. Cas. 902

Hon'ble Judges : Newbould, J

Bench : Single Bench

Judgement

Newbould, J.—The learned Subordinate Judge has, I think, erred on both the grounds on which he rejected the application for substitution. The concluding portion of the ruling to which he refers--Mahomed Yusuf v. Abdur Rahim 26 C. 839 : 4 C.W.N. 558 : 13 Ind. Dec. (N.S.) 1138 shows that it is not necessary to take out a certificate under the Succession Certificate Act when the decree-holder has died during the pendency of the execution proceedings. As regards the second point, it is only necessary to refer to the decision of this Court in the case of Jagat Tarini Dasi v. Rakhal Chandra Tewary 3 Ind. Cas. 324 : 14 C.W.N. 752 : 10 C.L.J. 396 and more particularly to the remark at page 753 Page of 14 C.W.N.--Ed. in the paragraph commencing with "On behalf of the respondent a preliminary objection has been taken."

2. The Rule is made absolute and the order of the Subordinate Judge, dated the 2nd December 1919, refusing substitution is set aside. Substitution will be made as prayed for and execution will proceed.