

(1919) 07 CAL CK 0034
In the Calcutta High Court

Raja Promada Nath Roy Bahadur

APPELLANT

Vs

Abdul Majid Munshi and Others

RESPONDENT

Date of Decision : 17-07-1919

Acts Referred:

Citation : AIR 1919 Cal 242(1) : 53 Ind. Cas. 480

Hon'ble Judges : Walmsley, J; Syed Shamsul Huda, J

Bench : Division Bench

Judgement

Shamsul Hoda, J.—This application arises out of a suit for rent. The suit was dismissed by the first Court and the dismissal was upheld on appeal. It appears that the defendant No. 17, Sakina Khatun, died when the case was pending in appeal before the lower Appellate Court and the appeal proceeded without her heirs being substituted. We are asked now in the appeal preferred to this Court to substitute the heirs of Sakina Khatun. It seems to me that the question of substitution can only arise where there is a death pending a suit or appeal. In this case, the death having taken place before the appeal in the lower Appellate Court was decided and not while the appeal was pending in this Court, I do not think we can order the substitution prayed for. The Rule is accordingly discharged. The costs of the minor opposite party represented by the Deputy Registrar having already been paid, we make no order as to costs.

2. If the applicant has any remedy, he has to make a proper application to the proper Court if so advised.

Walmsley, J.

3. I agree.