

(1929) 02 CAL CK 0041
In the Calcutta High Court

Rajabala Dasi

APPELLANT

Vs

Jai Chand Lal Babu and Others

RESPONDENT

Date of Decision : 18-02-1929

Acts Referred:

Citation : AIR 1930 Cal 251

Hon'ble Judges : B.B. Ghose, J

Bench : Division Bench

Judgement

B.B. Ghose, J.—This is an appeal on behalf of the defendant against an order of the learned Subordinate Judge refusing to set aside an ex parte decree. On the date fixed for the hearing of the lease the plaintiff was ready. The defendant prayed for time and produced a medical certificate in support of the allegation that he was ill. The Subordinate Judge was of opinion that the defendant was guilty of repeated laches on various grounds and rejected the (defendant's petition but at the same time allowed five days time to the defendant to produce his witnesses. The plaintiff's evidence was taken on that very day. Instead, however, of waiting for five days in order to enable the defendant to produce his witnesses as directed, by him, the Subordinate Judge made an ex parte decree on that very day. This appears to be wrong in form. As to the illness of the defendant on the day when he made his application, there is no doubt, as the Subordinate Judge himself says that he accepts the evidence of the doctors who have been examined. It is true that the defendant was suffering from illness for a long, time and that probably he would not have been able personally to attend the Court. The learned Judge, however, says that the defendant had a relative who looked after his case. That relative, it appears, met with an accident as he was run over by a motor car. The principal question, however, is the fact that the Subordinate Judge did not wait for the five days allowed by him to the defendants. We are, however, of opinion that the original defendant who is now dead had been guilty of gross laches, as the learned Subordinate Judge has said. We, therefore, set aside the order of the learned Subordinate Judge and direct that on the "appellants" paying to the respondents three gold mohurs as the

costs of the hearing of this appeal irrespective of the result of the suit, the suit be restored to its original, file and heard on the merits.

2. It should be clearly understood that the defendant, that is, the substituted, defendant, must be ready to go on with the case on the date fixed, and that no further indulgence should be shown to her. We make this order without any reference to the question whether the plaintiffs are governed by the Mitakshara or Dayabhag school of Hindu Law which, we are told, was the subject matter of controversy in the Court, below. If the costs are not paid by the appellant in the Court below within a. month from this day, this appeal will stand dismissed and the order of the Court below refusing to set aside the ex parte order will stand. This order is peremptory. Let the record be sent down without delay.