

(1929) 12 PRI CK 0012

In the Privy Council

Case No : Privy Council Appeal No. 66 of 1927

Shah Ahid Husain and others

APPELLANT

Vs

Mohammad Ismail and others

RESPONDENT

Date of Decision : 16-12-1929

Acts Referred:

Citation : (1930) AIR(PC) 264

Hon'ble Judges : Handworth, Lords Merrivale, Allahabad, JJ.

Advocate : Dold, Douglas Grant, for the Appearing Parties.

Judgement

The Lords of the Committee having taken into consideration an humble petition of the appellants setting forth the course of this litigation down to His Majesty's Order in Council dated 30th July 1923 granting special leave to appeal: that subsequent to His Majesty's Order several respondents died and owing to the necessary revivor proceedings the record was not received by the Registrar of the Privy Council until 16th May 1927 : that during the pendency of the appeal respondents 1, 9, a legal representative of respondent 9, respondents 23, 28, a legal representative of respondent 28, respondents 53, 82, 84, 98, 109, 113, 140 a legal representative of respondent 140, respondents 147, 150 and 184 have died and in various supplemental records the High Court certified the proper persons to be substituted for the deceased; that by two orders of His Majesty in Council dated respectively 20th December 1927 and 15th August 1929 the appeal was revived as against the substituted respondents but no appearance has been lodged on behalf of these respondents and no case has been lodged on their behalf : that on 1st August 1929 cases were lodged on behalf of the petitioners and the original respondents respectively but by reason of the deaths that have occurred among the respondents and the consequent proceedings necessary under the rules for the revival of the appeal against the representatives of the deceased it has been impossible to bring the petitioners' appeal on for hearing : that the petitioners submit that the case is one in which it is not necessary in the interest of the respondents and their heirs and representatives that the rules as to the substitution of the representatives should

be required to be observed before the appeal is brought on for argument for the following reasons viz. : (a) that a case has been lodged on behalf of the original respondents and, the interests of the original respondents and of the substituted respondents are identical and each of them is concerned to defend the interest of all; (b) that the respondents appeared by the same pleaders in both the Subordinate Court and High Court and on the arrival of the record at the Privy Council Office appearance was entered by the same firm of solicitors on behalf of all the respondents; (c) that the respondents were all residents in the same village of Behat and of the representatives of those deceased most are also resident there; that Mohammad Husaain alias Naunaha the guardian of Mt. Khudeja and Mt. Roqaya (two of the legal representatives of the deceased respondent 150 and of Mohammad Hasan alias Naunaha a legal representative of the deceased respondent 150) having died it was certified by an order of the High Court dated 7th June 1929 that Mushabbar Husain is the proper person to be appointed guardian of the minors; that Mushabbar Husain is not represented in England and copies of the order bringing him on the record would have to be served on him in India and under R. 43 (b), Judicial Committee Rules, the appeal could not be set down as against him until the expiration of the three months from the date of the service of the order for revivor; that owing to the large number of respondents it is apprehended that more of the respondents may die before the completion of the revivor proceedings thus occasioning a fresh set of substitution and revivor proceedings and further delay : that the petitioners are desirous of bringing the appeal to hearing in the forthcoming Hilary Sittings with proper protection for all parties concerned; And humbly praying that the appeal may be set down for hearing in the forthcoming Hilary Sittings as against the surviving respondents with liberty reserved to the petitioners in the event of their succeeding to proceed with the appeal subsequently (after due proceedings of substitution and revivor) against the other respondents or their representatives or for such further order as may seem just.

And upon hearing counsel in support of the petition and the solicitors for the appearing respondents having signified in writing their consent to the prayer of the petition.

Their Lordships do hereby order and direct (1) that the appeal be set down for hearing as against such of the respondents as have appeared or have both served with notice of any order in Council bringing them upon the record and (2) that all questions as to how any other respondents are to be proceeded against do stand for determination if necessary at the hearing of the appeal.

Whereof all parties whom it may concern are to take notice and govern themselves accordingly.