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Court : Kolkata

Decided On : Jun-25-1896

Reported in : (1896)ILR23Cal912

Judge : Amber Ali, J.

Appellant : Beejraj

Respondent : Bhyropersaud

Judgement :

Amber Ali, J.

1. This is an application on summons for revival of a suit on the death of the plaintiff. The defendant's attorney contends that the applicants, not having obtained letters of administration, or a Certificate under Act VII of 1889, are not entitled to ask that the suit may be revived as against them. In my opinion it is not necessary that either letters of administration, or a certificate under Act VII of 1889, should be obtained in order to. entitle the applicants to ask that they may be permitted to proceed with this suit. They are members of a. Mitakshara family, of which the deceased plaintiff was a managing member. As such, they bad, jointly with the deceased, a subsisting interest in the subject-matter of the suit. It follows that, on the death of the plaintiff, his interest parsed to them by survivorship, and not by succession. This view is in accordance with the decision of the Bombay High Court in the case of Raghavendra Madhav v. Bhima I.L.R. 16 Bom. 349.

2. The present case, however, is unprovided for, except by Section 372 of the-Civil Procedure Code. The application, therefore, should have been in the form indicated in that section, namely, that the suit be continued by the applicants. I shall proceed under that section and make an order for the continuance of the suit by the applicants.

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