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him to get the relief he seeks from the Sessions Judge. I do not think that this is sufficient. I can well conceive circumstances which might require that this Court should depart from its ordinary rule, and this is what is said in *Emperor* v. *Kali Charan*. I find no such circumstance in this case and therefore decline to exercise the power conferred by section 437 and reject the application. The applicant is of course at full liberty to apply to the Sessions Judge if he is so advised.

APPELLATE CIVIL.

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December 20

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Sir William Burkitt.

HAIDAR HUSAIN AND OTHERS (DEFENDANTS) *v.* ABDUL AHAD AND ANOTHER (PLAINTIFFS).*

Civil Procedure Code, section 362—Parties—Death of sole appellant.—All representatives not brought upon the record—Abatement of appeal.

The sole appellant, a Muhammadan, died pending the appeal, leaving him surviving a widow, two sons and two daughters. The two sons applied to have themselves brought on to the record as appellants, but did not ask that their mother and sisters should be made parties to the appeal. An application to that effect made by the respondents was not acted upon by the lower appellate Court. *Held* that it was the duty of the sons to have brought upon the record, either as appellants or respondents, the other representatives of their father, and, as they had not done so, the appeal abated. *Ghamandi Lal* v. *Amir Begam* (1) followed.

ONE Muhammad Naki brought a suit in the Court of the Munsif of Rasra against several defendants asking for the demolition of certain constructions which he alleged the defendants to have wrongfully erected and for possession of the land on which they stood. The Munsif dismissed the suit. The plaintiff appealed, but died shortly after the appeal was filed. He left two sons, a widow and two daughters. The sons applied to be brought upon the record of the appeal in place of their father and were so brought, but made no attempt to have the other representatives of the plaintiff made parties to the appeal. The respondents did make an application to that effect; the other representatives were served with notice of this application, but paid no

* Second Appeal No. 506 of 1906, from a decree of Sheo Prasad, Additional Subordinate Judge of Ghazipur, dated the 9th of April 1906, reversing a decree of Manmohan Sanyal, Munsif of Rasra, dated the 31st of August 1905.

(1) (1894) I. L. R., 16 All., 211.

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attention to it, and the Court under the circumstances declined to add them as appellants and directed the hearing to proceed. The appeal was allowed and the plaintiff's claim decreed. The defendants appealed to the High Court.

Mr. *M. L. Agarwala*, for the appellants.

Mr. *Abdul Raoof* and Pandit *Moti Lal Nehru* for the respondents.

STANLEY, C.J., and BURKITT, J.—The suit out of which this second appeal has arisen was instituted by one Muhammad Naki. His suit was dismissed in the first Court, whereupon an appeal was filed by him, during the pendency of which he died leaving as his legal representatives, his widow, two sons and two daughters. The two sons applied to the Court to be brought upon the record as appellants, and they were so brought. Thereupon the defendants asked the Court to have the other representatives also brought upon the record. These representatives were served with notice of the application, but took no notice of it, and in view of their attitude the Court did not feel justified in adding them as appellants and declined to do so, directing that the hearing should proceed. It was obviously the duty of the two sons to apply to the Court to have the other representatives brought on the record either as appellants or as respondents but they neglected to take any steps in this direction. The result is that in accordance with the ruling of this Court in the case of *Ghamandi Lal* v. *Amir Begam* (1) the appeal abated. We had occasion to consider this ruling in the recent case of *Jugal Kishore* v. *The Collector of Bijnor* (2), and we approved of and followed it. It is too late now to ask us to pass an order upon the application of the defendants to bring the other representatives on the record, which was rejected by the Court below. The result is that the appeal to the lower appellate Court abated, and the decree obtained from that Court must be set aside and the decree of the Court of first instance restored with costs in all Courts.

Appeal decreed.

(1) (1894) I. L. R., 16 All., 211. (2) Second Appeal No. 52 of 1905.