

(1878) 06 CAL CK 0002
Calcutta High Court
Case No: Special Appeal No. 635 of 1877

Gour Monee Debea

APPELLANT

Vs

Krishna Chunder
Sannyal

RESPONDENT

Date of Decision: June 14, 1878

Final Decision: Dismissed

Judgement

Jackson, J.

In this case Baboo Hem Chunder Banerjee has pressed upon us very much what he considers to be something in the light of an estoppel against the Plaintiff,—that is to say, an admission or statement made in the kobala by which this property was conveyed, that Haradhun, the former owner of the property, had died which means either childless or without male issue: and it is contended that if this had been the case, as it must be taken as against the Plaintiff, then the title of Gour Monee, the first Defendant, who was the daughter of Haradhun, would arise immediately upon his death; and that neither the Plaintiff's vendor Bama Sundari, nor her deceased husband, who was Haradhun's sister's son, could have taken this property; and therefore it is insisted that, according to that admission, Gour Monee, who it is admitted has been living in the house, must be taken to be the owner, and the Plaintiff's suit ought to be dismissed.

2. Now, it appears to us that this is not such an admission as conclusively binds the Plaintiff. It was not essential to state in this kobala by what means the property which was being sold had come to the husband of the vendor. It was enough for her to recite that her husband being dead she was his heir and representative, and that, for the reasons stated, she thought fit to sell the property. The death of Haradhun took place many years ago, when Bama Sundari, the Plaintiffs vendor, was quite a young girl. It may be that she forgot or was imperfectly informed of the facts, or that those who advised her misunderstood the Hindu law, and assumed that Bissumbhur, the husband, had succeeded Haradhun by reason of his having died childless or without a son. In a recent case See Bhoobun Mohini Debia v. Hurrish

Chunder Chowdhry ILR 4 Cal 23 before the Privy Council, the word has been interpreted to mean without issue, that is to say, the term includes offspring of both sexes, and if the word interpreted, the plain-tiff's vendor ignores the existence of Gour Monee. It is a circumstance which the Court below would be quite right in taking into consideration, but which it would be wrong in holding binding as against the Plaintiff. But whether that would be so or not, it seems to be really immaterial, because there is another finding of the Court below which equally protects the Plaintiff, and that is, as we understand, an admission that Bama Sundari and her husband Bissumbhur have been in continuous possession of this property since the date of the kobala, and that Gour Monee, whether entitled or not, and although she has lived on the premises, was not the real possessor or the owner. That being so, the title of Gour Monee, would be extinguished by lapse of time. Under these circumstances we are not in a position to disturb the judgment of the lower Appellate Court.

3. The appeal is dismissed with costs.