(1868) 06 CAL CK 0003

Calcutta High Court

Case No: None

Kadambini Dasi		APPELLANT
	Vs	
Prasannamayi Dasi		RESPONDENT

Date of Decision: June 23, 1868

Judgement

Sir Barnes Peacock, Kt., C.J.
The first ground of appeal in this case is that, according to the true construction of the will of Krishna Chandra Ghose deceased, and the events which happened, the respondent ought not to have been declared entitled as his widow and legal representative to succeed to his moveable and immoveable estate, or any part thereof, nor to have the account taken as directed by the decree, nor to have a partition of the joint estate of Krishna Chandra Ghose and Umesh Chandra Ghose. That depends upon what is the proper construction of the will of Krishna Chandra. The will says that as to his two-anna share of the ready-money of the whole of his paternal estate he gives rupees 7,000 to Padmamani Dasi, his mother, and rupees 5,000 to his wife, Kadambini Dasi. These two legacies are given out of his two-anna share of the ready-money of his paternal estate. He says, "besides the two-anna share of the wealth in ready money and landed property which remains, you, Srijut Mahashoy, will keep under your own charge; now you are to remain malik of the whole of the property; as master and manager of the entire property you will perform all acts; you will cause one of your sons to be received in adoption as my son "

2. It appears to me that Umesh Chandra did not take any beneficial interest under this will, but that it was intended that ha should remain as karta or manager of the estate. I think it is clear that the testator never could have intended that if a child should be adopted as his son, that this child should take nothing by inheritance in consequence of all his property being devised away; and there are no words which lead to the construction that his brother should take the property until a son was adopted, and that upon such adoption the estate should go over. The testator''s interest in the estate which he held jointly with his brother consequently descended to his widow as his heiress,

subject to the two legacies; and I am of opinion that the estate which descended to the widow was not forfeited even if she refused, as was alleged, to adopt one of the sons of the brother. We have not therefore entered into the question of fact as to whether she did or did not refuse to adopt. The judgment on appeal modified and altered the decree in other points. The point of jurisdiction was not raised.