

(1878) 01 CAL CK 0006

Calcutta High Court

Case No: None

Gocool Chunder
Chowdhry and
Another

APPELLANT

Vs

Koonj Behary
Chowdhry and Others

RESPONDENT

Date of Decision: Jan. 24, 1878

Citation: (1878) ILR (Cal) 616

Hon'ble Judges: Morris, J; Kemp, J

Bench: Division Bench

Judgement

Kemp, J.

This is an application, not as the Judge states for a certificate to collect debts due to the estate of Kalee Sundari Chowdrain, who had no interest beyond a life-interest, but it is an application for a certificate under Act XXVII of 1860, to collect debts due to the estate of the late Gournath Chowdhry. Now it is admitted that Gournath Chowdhry died in Aughran 1245, or some forty years ago. The application for a certificate on the part of the appellants before us is on the footing that they are the gyantees of Gournath Chowdhry, and there was a counter-application by two ladies, Tripura Sundari and Kheema Sundari, who allege that they are the widows of Gobind Chunder Chowdhry, the adopted son of Gournath Chowdhry, and that they represent the interest of his two minor sons as their guardians. The Judge has examined a large number of witnesses in this case. Their examination appears to have lasted over twelve days; it was then postponed for a considerable period and resumed again. The examination of the witnesses extends over no less than 114 pages of foolscap paper. Upwards of a 100 exhibits were filed, and the Judge, after entering into considerable argument as to whether certain sections of the Evidence Act applied, as regards the admissibility or otherwise of certain documents, has come to the conclusion that a prima faice case has been made out in this case as to the alleged adoption of Gobind Chunder Chowdhry under an onoomutee puttro

granted by Gournath Chowdhry to his widow, the late Kalee Sundari Chowdrain. The application for a certificate on the part of the gyantees was therefore rejected.

2. We think that this application might have been rejected on a very simple ground and without entering into this protracted investigation. It is an application made for the purpose of representing the estate and collecting the debts of Gournath Chowdhry, who died more than forty years prior to this application, and therefore on this ground alone we think that this application should not have been entertained.

3. In a case of this description under Act XXVII of 1860, although under the ruling in *Mussamut Anuncla Kooer v. Baokoo Singh* 20 W.R. 476 referred to by the pleader for the appellant in the course of the argument, the Judge was bound to inquire which title was made out for the purposes of the legal requirements of the Act, these learned Judges also observe that no title can be judicially determined between the parties as the result of the inquiry made under Act XXVII of 1860. Now it appears to us clear that the object of the application in this case was to obtain a judicial determination of the question whether Gobind Chunder Chowdhry was the adopted son of the Gournath Chowdhry or not, a question which can only be decided in a civil suit.

4. We therefore dismiss this appeal.