
(1874) 08 CAL CK 0005

Calcutta High Court

Case No: Special Appeal No. 172 of 1874

Mitta Kunth Audhi Carry

APPELLANT

Vs

Neerunjun Audhicarry
and Others

RESPONDENT

Date of Decision: Aug. 14, 1874

Final Decision: Allowed

Judgement

Sir Richard Couch, Kt., C.J.

I think that the reasons for which it has here been held that one of several joint owners of property is entitled to a partition apply to this case. The circumstance that it is a right to perform the worship of the idol is not one which deprives any of the joint owners of the right to a partition, and compels the Court to say that they shall be obliged to perform the service jointly, and to undergo the many inconveniences which might arise from such a state of things. In this very case, we have an instance of division having already taken place, and the worship being now performed by three sets of persons by turns. The Deputy Commissioner appears to me to have misunderstood the nature of the plaintiffs claim. He seems to have thought that there must be an arrangement binding upon the parties that there should be this division. In another part of his judgment, he seems to have thought that there must be proof of disputes and quarrels between them before the Court could interfere to make a partition. It is not necessary that there should be evidence of disputes and quarrels, or of any pecuniary loss or gain as he seems to have thought in another passage of his judgment where he says:--"In reality the decision in suit involves no pecuniary loss or gain, since each sharer would reap the profits arising from the payment made by their disciples in turn." The suit is founded upon the right of the plaintiff, as one of several owners of this which may be described as property, to a partition. No doubt, the plaintiff is entitled to that; and the decree of the first Court was right in awarding it. But that decree has not made provision for the term which each of the three persons, the plaintiff and the two defendants, should have, and does not state whether the plaintiff is to have his turn first, or second, or third. We must therefore direct the Extra Assistant Commissioner to determine by lot in what order the plaintiff and the two

defendants shall exercise the right to worship the idol. And having determined that he should insert it in his decree, so that it will be settled in what order they are to exercise the right of worship.

2. The decree of the Deputy Commissioner will reversed, and the case will be returned to the Extra Assistant Commissioner for the purpose of completing the decree in that way. The appellant will have his costs.