

(1877) 05 CAL CK 0003

Calcutta High Court

Case No: None

Kadumbinee Dossee

APPELLANT

Vs

Koylash Kaminee
Dossee and Others

RESPONDENT

Date of Decision: May 29, 1877

Citation: (1877) ILR (Cal) 431

Hon'ble Judges: Kennedy, J

Bench: Single Bench

Judgement

Kennedy, J.

I cannot add the minor as a party plaintiff, and I think I must dismiss the suit, for it appears to me that the plaintiff has no interest in the land and no right to maintain this proceeding. These are two reasons why the minor should not be joined as a party plaintiff: first, because if he were made a party at this stage of the proceedings when several witnesses have already been examined, he would be bound by evidence given in his absence; and secondly, because his being made a party would, probably, expose him to an adverse decision which would be clearly binding on him; and I even think he would be incapacitated from hereafter seeking to disallow the plaintiff's costs of the suit from being paid out of his estate in administration. These costs would then be costs in a cause to which he would be a party, and specially made a party by order of Court. When I first heard of the existence of a son of Nundolal it occurred to me, on general principles, that the suit could not be maintained. There is not much authority on the question, and though have looked into it myself and been aided by Mr. Allen's research, I have not been able to discover any direct authority bearing on the point. It is clear, however, that, in respect to Hindus, letters of administration granted by the Supreme Court conveyed no more estate than what by the ecclesiastical law of England vested in the ordinary or the administrator,--that is to say, personal estate only. The Indian Succession Act and the Hindu Wills Act expressly exclude Hindus from the operation of the provisions in the first of those relating to administration, save those respecting

administration with a will annexed. Act XXVII of 1860 goes even further to limit the effect of a certificate in the nature of administration granted by the Mofussil Courts to Hindus under the provisions of that Act. And as regards Fergusson's Act, 9 Geo. IV, c. 33, that expressly excludes executors and Administrators of Hindus and Mahomedans from the powers and provisions of the Act, and even in the cases where it did apply, it would seem that it did not vest the lands in the executors or administrators; it only conferred on them a power of sale. I, therefore, think that the plaintiff has no such estate in law as would entitle her to maintain this suit.

2. It has been urged that I might treat the plaintiff as manager on behalf of the infant, and as such allow her to proceed with the suit. I do not think I can let her do so. I do not think that the manager of a Hindu family, who has no interest in the estate at all, is entitled, by virtue of his managership, to sue in his own name. I am aware that, in the Mofussil Courts, plaints are constantly presented by A. B., guardian of C. D., against E. F., as guardian of G. H. I have grave doubts whether such suits are validly instituted; but the long course of practice may perhaps validate them, and the 4th schedule to the new Procedure Code, No. 11, seems to contemplate the existence of suits by a manager without bringing the actual party on the record. However, that Act is not yet in force, and I don't know of any instance in this Court in which such a plaint has boon admitted, and I should be unwilling to introduce here, save by express legislative direction, the mofussil form. But even in the mofussil the person really entitled is named in the title, and that has not been done here, so that even if I were inclined to do so, the frame of the plaint in this case would not allow me to treat it as being a suit of the description in the mofussil, which I have mentioned. I must, therefore, dismiss the suit with costs on scale 2.