

(1869) 02 CAL CK 0005

Calcutta High Court

Case No: Miscellaneous Regular Appeal No. 493 of 1968

Srimati Durgadasi Debi

APPELLANT

Vs

Jadunath Mookerjee

RESPONDENT

Date of Decision: Feb. 11, 1869

Judgement

Loch, J.

The appellant, as sister to one Thakurdas Bhattacharji, applies for a certificate under Act XXVII of 1860, to enable her to collect the debts due to the estate of the deceased. The deceased died about 7 years ago, and the whole of his property was taken possession of by the respondent, Jadunath Mookerjee, the so-called heir-at-law, who was the son of deceased's father's sister. The appellant now urges that at the time of her brother's death she was pregnant, and subsequently gave birth to a son, who died in infancy, and that as representative of that son, who was the legal heir of Thakurdas, she is entitled to the certificate. The Judge has rejected the application, holding that, after the lapse of so many years, it is preposterous to ask the Court to declare, on a summary enquiry, that the applicant is entitled to oust from possession the person whose rights she has hitherto not disputed.

2. An appeal has been preferred, on the ground that the Judge was wrong in refusing the application for certificate on the ground of lapse of time, and a decision of a Division Bench of the High Court, in Pulash Monee Dossee v. Anand Moyee Dossee (8 W.R., 398), is quoted in support; and it is prayed that the Judge may be directed to take the evidence of the appellant's witnesses to prove the truth of her statement that she was pregnant when her brother died, and that she subsequently gave birth to a son. The relationship between the appellant and deceased is admitted; and as the reason assigned by the Judge for refusing to give the appellant a certificate under Act XXVII of 1860 does not appear to the Court to be sufficient, we remand the case to the Judge, with directions to him to allow the appellant to produce evidence in support of her allegation; and should that, in his opinion, be sufficient to prove the fact asserted by her, he will then apply the law to the case and pass orders accordingly. The costs to follow the result of the enquiry.