

(1869) 02 CAL CK 0010

Calcutta High Court

Case No: Regular Appeal No. 109 of 1868

Krishna Kanta
Paramanik

APPELLANT

Vs

Bidya Sundari Dasi and
Others

RESPONDENT

Date of Decision: Feb. 5, 1869

Judgement

Sir Barnes Peacock, Kt., C.J.

It appears to us that the arbitrators were not authorized, by the terms of the submission, to take any other evidence than that of the widow as to whether or not the plaintiff was entitled to an 8-pie share, in addition to the one-third share, which, according to the ordinary rules of the Hindu Law of Inheritance, descended to him from his father. It appears from the award that the arbitrators did not consider that the widow's evidence made out the plaintiff's claim to the 8-pie share. Having decided that the plaintiff's claim had not been made out by the evidence of the widow, the arbitrators went into other evidence, and gave plaintiff a decree for the 8-pie share on the evidence taken by them. That portion of the award which gave the plaintiff the 8-pie share, was properly held by the Subordinate Judge not to be binding. If the arbitrators had determined the case according to the terms of the submission, they would have decided that the plaintiff had failed to establish claim to the 8-pie share. We do not think that we ought to remand the case to the Subordinate Judge, for the purpose of taking further evidence, to enable the plaintiff to establish that which the widow's evidence failed to prove before the arbitrators; for it was the intention of both parties, when they referred the case, that it should be determined upon the evidence of the widow alone. We think that the decision of the Subordinate Judge ought to be affirmed with costs.