

(1879) 12 CAL CK 0007

Calcutta High Court

Case No: None

Mrinamoyi Dabia on
behalf of Shibchand
Chuckerbutty

APPELLANT

Vs

Jogodishuri Dabia

RESPONDENT

Date of Decision: Dec. 5, 1879

Citation: (1880) ILR (Cal) 450

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

Bench: Division Bench

Judgement

Morris, J.

The preliminary objection taken, that this appeal cannot proceed, must, we think, prevail. The minor whom the appellant Mrinamoyi represents in the appeal, was not a party, as the law requires, to the proceedings, in the Court below, nor can he be affected by these proceedings. The application for revocation of the probate, applied for by Jogodishuri, was made by Khetternath, who styled himself "father and guardian of the minor Shibchand." There is nothing in the record to show, and so far as the Court is aware, Khetternath had obtained no certificate under Act XL of 1858, nor had he permission granted by the Court, under the special circumstances specified in Section 3 of that Act, to represent the minor as objector in the probate proceedings. It is contended, that it may be presumed, that the Court gave the necessary permission u/s 3 to represent the minor; but we think that this permission must be formally recorded by the Court as it is an act of judicial discretion which is necessarily open to appeal. This view appears to us to be supported by various, rulings of this Court, and of the Allahabad and Bombay High Courts. Chapter XXXI of the present Civil Procedure Code, which is applicable to this case, lays, down a form in which a minor should appear as a party in a suit, and this form must be strictly followed. Any neglect of it may be attended with serious consequences as it may be that at a subsequent period the minor may repudiate the acts of his self-elected guardian, and decline to be bound by the proceedings taken improperly on his

behalf. We, therefore, dismiss the appeal with costs.