
(1879) 04 CAL CK 0018

Calcutta High Court

Case No: None

Gourah Koeri

APPELLANT

Vs

Gujadhur Purshad

RESPONDENT

Date of Decision: April 25, 1879

Citation: (1880) ILR (Cal) 219

Hon'ble Judges: Tottenham, J; Mitter, J

Bench: Division Bench

Judgement

Mitter, J.

One Khoonjo Behary died on the 7th June 1878, leaving him surviving two sons, Gujadhur and Kanny, and his widow Musst. Gourah Koeri. Gujadhur and Kanny are step-brothers, Kanny's mother being Gourah Koeri, and Gujadhur's mother had predeceased her husband. Gujadhur had attained majority before his father's death, and Kanny is still a minor. These three appeals arise out of three applications made to the lower Court. Two of these, by Gujadhur and Musst. Gourah Koeri, respectively, were made for obtaining certificates under Act XXVII of 1860 to collect the debts due to the estate of the deceased Koonjo Behary. The third application was made by Gourah Koeri to obtain a certificate under Act XL of 1858 for the administration of her minor son's property.

2. The District Judge has granted to Gujadhur a certificate under Act XXVII of 1860 to collect the debts due to his father's estate, and has rejected both the applications of Musst. Gourah Koeri.

3. Upon the evidence it appears to us clear, that Koonjo Behary and his two sons formed a joint Mitakshara Hindu family, and no partition has taken place since the father's death. The two brothers, with the mother, therefore, constitute a joint Hindu family governed by the Mitakshara law. That being so, the interest of the minor brother in the joint family estate is not property of which one can take charge. This view is supported by the cases of Sheo Nundun Singh v. Mussamut Ghunsam Kooeree (21 W.R., 143), and Mussamut Ajhola Kooeree v. Baboo Digambur Singh (23

W.R., 206).

4. It is clear from the provisions of Act XL of 1858, that a certificate for the administration of a minor's proper fry can only be granted, where it is of such a nature that it is capable of being taken charge of.

5. The minor in this case not being shown to possess any such property, the District Judge, we think, is right in refusing the application of Musst. Gourah Koeri under Act XL of 1858.

6. The learned Counsel who appeared for her before us, relied upon a decision of this Court--Mussamut Etwari v. Ram Naryan Ram (4 B.L.R., Ap., 71). In this case, the question, whether the interest of a member of a joint family governed by the Mitakshara law in the joint family estate, is such property as can be taken charge of by a guardian, was not raised. This case seems to have been cited by the District Judge in the judgment which formed the subject of appeal in the decision already referred to, Mussamut Ajhola Kooeree v. Baboo Digambur Singh (23 W.R., 206). We are, therefore, of opinion that the Judge was right in rejecting the appellant's petition to be appointed the administrator of the minor's property. We may observe here that, in the view taken by this Court in the case of Sheo Nunden Singh v. Mussamut Ghunsam Kooeree (21 W.R.,143), and now adopted by ourselves, it is not necessary that the appellant should be furnished with a certificate under Act XL of 1858 to enable her to bring a suit for partition on behalf of her minor son, for the effect of our decision is, to hold that Section 3 of that Act has no application to the minor's undivided share of the family property. We think, too, that the District Judge is mistaken in supposing that even permission of the Court under chap. xxxi of the CPC to represent the minor in such suit will be necessary. The suit may be brought in the minor's own name, his mother being made his next friend. For this, no permission is required.

7. We are also of opinion that the family being joint, the District Judge has properly exercised his discretion in granting the certificate, to collect the debts due to the estate of the deceased father, to the eldest son, who is naturally the kurta of the family.

8. The result is, that all these appeals are dismissed with costs.