

(1880) 07 CAL CK 0007

Calcutta High Court

Case No: None

Noferdoss Roy and
Others

APPELLANT

Vs

Modhu Soondari
Burmonia and
Another

RESPONDENT

Date of Decision: July 6, 1880

Citation: (1880) ILR (Cal) 732

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

Bench: Division Bench

Judgement

Jackson, J.

There are two principal questions raised on the appeal of the plaintiffs in the present suit. One of them relates to an issue of fact; the other to a question of law. The plaintiffs contend that the Court below has come to an erroneous conclusion as to the circumstances under which a deed called a willnama, which was afterwards in substance affirmed by a document called an ikrarnama, was executed by Lukhmimoni Dossee, the widow of Jugomohun, who as mother inherited from her infant son Mul Chund. (His Lordship then considered the evidence as to the execution of these documents, and continued).

2. The next question is as to the effect of the willnama and its validity. On that part of the case, I think it sufficient for us to refer to decided cases in our own Court in which this very point has been raised. These cases appear to me to be absolutely deciding the question so far as we are concerned. One is the case of Sharma Soonduree v. Surut Chunder Dutt (8 W.R. 500), in which the judgment was delivered by myself, but in which I had the assistance and concurrence of my lamented colleague, Mr. Justice Dwarka Nath Mitter. In a case turning upon a most important point of Hindu law, I need hardly say that it is the assent of Mr. Justice Dwarka Nath Mitter which gives its chief value to that judgment. Then in addition, we have a quite

recent case--Gunga Pershad Kur v. Shumbhoo Nath Butmon (22 W.R. 393) decided by Mr. Justice Romesh Chunder Mitter. In both these cases it is held, that a surrender by a Hindu widow or mother (for the two cases I think are not distinguishable) to persons who at that time are unquestionably the heirs by Hindu law of the person from whom she has inherited, vests in those persons the inheritance which they would take if she at that time were to die. This is a conclusion which, to my mind, is so desirable, and it seems to me so consistent with the general principles of the Hindu law, and with the state of Hindu society, that I should not be inclined to come to any other conclusion unless necessity for it were very strongly made out. That being so I think the decision of the Court below upon this main part of the case was quite correct. and that the appeal of the plaintiffs on this point should be dismissed.