(1867) 04 CAL CK 0005

Calcutta High Court

Case No: Special Appeal No. 2622 of 1866

Gungadhur Roy		APPELLANT
	Vs	
Wooma Soonderee Dassee and Others		RESPONDENT

Date of Decision: April 6, 1867

Final Decision: Disposed Off

Judgement

Sir Barnes Peacock, Kt., C.J.
The Division Bench considered that the judgment was not a judgment in rem but in consequence of the conflicting decisions of the High Court, dated 9th August 1865, in the case of Khoka Koonwar v. Jugoo 3 W.R., 192, referred the question to a Full Bench. We are of opinion that the judgment was not a judgment in rem, and was not admissible as evidence against the plaintiff: see Kanhya Lall v. Radha Churn Ante, p. 662, decided to-day by this Bench.

2. In the case cited, the Court held that a mokururee pottah, which had been set aside in a suit brought by two shareholders in the estate against the defendant, would he inoperative against the plaintiff, who was also a co-sharer in the estate. It was said that the judgment was, "as it were, in rem;" but, as I understand the case, the Court merely held that a mokururee under which the defendant claimed, having been wholly set aside in a suit against him, could not be set up against a third shareholder, although the former suit was brought by only two of the shareholders, and the third shareholder was not a party. But this is a very different case; for it must be remarked that the defendant in that case was a party to the former suit in which the mokururee under which he claimed had been set aside. Here the plaintiff who churned under the mokururee was no party to the suit in which the mokururee under which he claimed was set aside. The case will go back to the Bench which referred it to us, in order that the appeal may be finally disposed of.