**(1871) 04 CAL CK 0003**

**Calcutta High Court**

**Case No:** Special Appeal No. 2279 of 1870

| | | |
|---|---|---|
| Mahomed Aizaddi Shaha | | APPELLANT |
| | Vs | |
| Shaffi Mulla and Another | | RESPONDENT |

**Date of Decision:** April 24, 1871

**Judgement**

Paul, J.

In this case it appears to us that the decision of the Subordinate Judge in an appeal from the decision of the Moonsiff amounts to a mistrial. The first Court found the document on which the plaintiff rests his case to be genuine by the light of the surrounding circumstances, and especially having regard to the motive which might well have induced the grandfather, in his old age, to make some provision for his grandson (the plaintiff), who, upon his demise, would, in this case, be no heir at all. That judgment has been, as it appears to us, very erroneously cancelled by the lower Appellate Court on considerations set forth in the decision under appeal, which principally consist of certain inconsequent and irrelevant remarks respecting the colour of the ink, the character of the writing observable on the face of the document on which the plaintiff relies, and the want of sufficient proof regarding the safe custody of the same document. These considerations appear to us to be of a purely speculative character and not to be warrantable in the face of the observations made by the Judicial Committee of the Privy Council in the case of Kali Prasad Tewari v. Rajah Sahib Prahlad Sen 2 B.L.R., P.C., 120, which expressly point out to our Courts the error of "substituting speculations for proof." There can be no doubt whatever that the document in question in this case came from proper custody, because it was filed by the person who is entitled to the property conveyed by it. There can be no doubt that this document is presumably thirty years old, and would ordinarily prove itself unless there are real grounds to suspect its genuineness. Now the grounds of suspicion in this case are, as already observed, purely of a speculative character. It appears to us that any difference of pen and ink would rather be an argument in favour of than against the genuineness of the deed, for if the theory of the lower Court be correct, that this

apparently old document has been lately fabricated, the ingenious individual who fabricated the deed would have taken good care to have written with the same pen and ink the whole documents; but it is unnecessary to dwell further on this judgment, for it appears to us to be a judgment that cannot at all be affirmed. The case must therefore be remanded to the Subordinate Judge to try, firstly, the question of limitation which was raised on the cross-appeal of the plaintiff upon the question of possession, making a distinct finding as to that possession; and, 2ndly, if limitation should be found not to bar the whole or any portion of the plaintiff''s claim, to try the genuineness of the deed in question by applying to it the ordinary, presumption of law which follows from its apparently Old date, and by the light of surrounding circumstances, and more especially having regard to the motive which might well have induced the grandfather to make some provision for his grandson in this case, and which fact would sufficiently account for the deed in this case. The costs will abide the ultimate result.