
(1868) 07 CAL CK 0030

Calcutta High Court

Case No: Special Appeal No. 80 of 1868

Kriparam

APPELLANT

Vs

Bhagawan Das

RESPONDENT

Date of Decision: July 2, 1868

Judgement

Phear, J.

The plaintiff's cause of action in this suit is, that he is entitled to obtain certain property, which belonged to Kadam Lal, in consequence of Kadam Lal's widow having forfeited her right to the enjoyment of the same by reason of her profligate conduct. The plaintiff seeks to make out his title to this property on the occurrence of the contingency I have mentioned, by setting up, that he is the adopted son of Ramnath, Kadam Lal's brother. The Lower Appellate Court has held that he is barred from setting up this title, because in a former suit against the same defendants, when he sought to obtain other property which had belonged to Ramnath, it was decided between the parties that he, the present plaintiff, was not the adopted son of Ramnath. I think that this last-mentioned decision does not afford a legal bar to his proving in the present suit, if he can, by legal evidence, that he is the adopted son of Ramnath, for he here seeks to obtain a different property upon a different cause of action. It seems to me, therefore, that the Lower Appellate Court has made a mistake in this respect, and that the suit ought to be remanded for re-trial. The first issue will, of course, be whether the plaintiff is, as he says he is, the adopted son of Ramnath, and the other issues will be those which properly arise on the merits of the question, whether or not he is, supposing him to be found to be the adopted son, entitled now to recover the property which he seeks. The costs will abide the event.