
(1872) 08 CAL CK 0014

Calcutta High Court

Case No: Special Appeal No. 142 of 1872

Janaki Pershad

APPELLANT

Vs

Mussamat Doorga
Bibee and Another

RESPONDENT

Date of Decision: Aug. 7, 1872

Final Decision: Dismissed

Judgement

Sir Richard Couch, Kt. C.J.

1. Three objections were raised in this special appeal on the part of the appellant; the first was that, on the plaintiff's own showing, there was a nearer heir to Boodnath Sing than the plaintiff, as one of the witnesses had mentioned in his deposition that there was a sister's son, who might be entitled in preference to the plaintiff. But we thought and said during the argument that we could not take this mention of the sister's son as a fact that was found by the Court, and could not act upon it. We are to deal with the case upon the facts found by the lower Appellate Court; that objection therefore could not be allowed to be raised. Another objection was that the property, which was the subject of the suit, was not the property of Boodnath Sing, but of his widow Mun gla and her stridhan, and a passage in the judgment was referred to in support of this view. But it is clear, notwithstanding that passage, that the lower Appellate Court, and indeed the parties also in the course of the suit, treated the property in question as that of Boodnath Sing, and the question in the suit being who was entitled to it as heir, it is certainly possible that the circumstance mentioned in the judgment of the purchase of some portion of it by Mun gla might have been explained. That objection, therefore, could not be allowed to be taken.

2. The only question that remained was whether the plaintiff being a brother's daughter's son could inherit the property, and that is settled by the decisions of the Privy Council in the case of Giridhari Lal Roy v. The Government of Bengal 1 B.L.R., P.C., 44 and of a Full Bench of this Court in [Amrita Kumari Debi Vs. Lakhinarayan Chuckerbutty](#) where it was held that the enumeration of bandhus in art. 1, s. 6, c. 2 of the Mitakshara is not to be considered exhaustive. That being so, there is no ground for saying that a brother's

daughter"s son cannot inherit in the absence of any nearer heir; and as it is not found in this suit that there is a nearer heir, the plaintiff is entitled to a decree. The appeal must be dismissed with costs.