(1912) 09 CAL CK 0021

Calcutta High Court

Case No: None

Kedar Nath Roy and Others		APPELLANT
	Vs	
Amritalal Mookerjee and Others		RESPONDENT

Date of Decision: Sept. 5, 1912

Citation: 17 Ind. Cas. 283

Hon'ble Judges: Carnduff, J; Ashutosh Mookerjee, J

Bench: Division Bench

Judgement

1. The subject-matter of the litigation which has culminated in this appeal is the estate of one Jogendra Chandra Roy. The plaintiffs-appellants are the great-grandsons of the great-great-grandfather of the deceased owner, while the defendant is the son of the daughter of the brother of his father. The question in controversy is, who has the preferential title as the reversionary heir. The Courts below have found in favour of the defendant, upon the authority of the Full Bench decisions in Guru Gobind v. Anand Lal 5 B.L.R. 15 : 13 W.R. (F.B.) 49. and Digumber Roy v. Moti Lal 9 C. 563 : 12 C.L.R. 204. It is not disputed that if these cases were correctly decided, the claim of the plaintiffs must be negatived. But it has been argued that both the Full Benches took an erroneous view of the fundamental principles which underlie the Dayabhaga, and, consequently, arrived at incorrect conclusions. On this basis, Sastri Golap Chandra Sarkar has addressed to us an able and learned argument to induce us to have the matter reconsidered by the Full Court. We have anxiously considered his argument, and we are of opinion that if the matter were res Integra, the view put forward by the appellants would deserve consideration. At the same time, we are of opinion that, on well-established principles, the matter should not be re-opened. The law on the subject has been laid down authoritatively by two successive Full Benches, once in 1870 and again in 1883. Attempts have previously been made to re-open the matter, but have never been successful. [See, for instance Dino Nath v. Chundi Koch 16 C.L.J. 14 : 16 Ind. Cas. 319 where in 1889 Mr. Justice Banerjee stated that, the question must be deemed settled by authority]. In these

circumstances, we are clearly of opinion that we should act on the principle stated by Lord Cranworth in Young v. Robertson (1862) 4. Mac. H.L. 314 at p. 325 in the following terms: "There is another duty incumbent on all Courts, and pre-eminently upon a Court of ultimate appeal, and which has been invariably observed, namely, that as regards those rules which regulate the settlement and devolution of property, those Courts, which have to interpret instruments and acts of parties, must take care to be very guarded against letting any supposed notions as to the inaccuracy of any rule, which has in fact been acted upon, induce them to alter it so as to endanger the security of property and titles." This doctrine has been recognised by their Lordships of the Judicial Committee in Sri Raja Rao Venkatasurya Mahipati v. Court of Wards 26 I.A. 83 96 : 3 C.W.N. 415 : 22 M. 383 though they did not apply the doctrine to that particular case, because there had not been such a long course of uniform decisions as ought not to have been reversed and the law altered.

2. The result is that the decree of the District Judge is affirmed and this appeal dismissed with costs.