

(1880) 09 CAL CK 0008

Calcutta High Court

Case No: None

Bykunt Nath Roy

APPELLANT

Vs

Mokundo Lall Roy

RESPONDENT

Date of Decision: Sept. 10, 1880

Citation: (1881) ILR (Cal) 289

Hon'ble Judges: Prinsep, J; Morris, J

Bench: Division Bench

Judgement

Prinsep, J.

The only point raised by the defendant, special appellant before us, is, that, by reason of his being an adopted, and not a naturally begotten, son of Brojo Nath Roy, the plaintiff is no heir to Gour Kishore under Hindu law, an adopted son not being recognized as a sakulya or samanodaka, nor is entitled to inherit if he be not a sapinda or related within three degrees from the common ancestor.

2. The general principle is very clearly laid down in the Dattaka Mimansal 6, para 53:

Without difference, relation to the father and other sires of the adopter obtains in the same manner as relation to the general family, the family deity, and family rules of that person; the term "son" is used without restriction in these and other passages.

3. Unless, therefore, we found some authority clearly restricting the rights of inheritance on the part of an adopted son, and declaring that they are something less than those of the naturally begotten son, we certainly should make no distinction between them. There is a distinction declared by Hindu law where a naturally begotten son inherits jointly with a son previously adopted, but we can find no express authority for limiting the rights of an adopted son to inherit to the estate of one related lineally by more than three generations from the common ancestor. The point seems never to have been raised before in our Courts, but we observe that the judgment of this Court in the case of Tara Mohun Bhattacharjee v.

Kripa Moyee Debea 9 W. R. 423 admits the rights of an adopted son to one more distantly related to him.

4. We, therefore, dismiss the appeal with costs.