

(1869) 04 CAL CK 0038

Calcutta High Court

Case No: Special Appeal No. 2560 of 1868

The Court of Wards on behalf of
Baboo Srigurbnaryan Sing and
Others

APPELLANT

Vs

Pratabnarayan Das and Others

RESPONDENT

Date of Decision: April 12, 1869

Judgement

Norman, J.

This is an appeal from the decision of the Additional Judge of Bhaugulpore. The question is whether, under the Mithila law, a mokurrari lease of 100 bigas of land, a very small portion of the ancestral estate, granted, at a nominal rent of one piece per biga, by way of a reward for long service to the Dewan of the family, by the father of the infant plaintiffs, who were in existence at the time of the lease, but did not concur in it, is valid. In the Lower Appellate Court it was contended that such a lease was not an alienation. But the Advocate-General admitted that he could not sustain that contention.

2. Secondly, it was contended that the grant being made on a partition to a person who had served faithfully, and whose ancestors had served as dewans for several generations, the gift was not an act of waste; and that, under the Mithila law, the father is in the position of manager, and is only restrained from such acts as amount to a waste of the estate; that the right of infants is only to interdict him from the dissipation of the estate. The texts of the Mitakshara are, however, too strong to be got over: "Neither the father nor grandfather is master of the whole immoveable estate. Immoveable property may not be consumed even by the father's indulgence:--which passages forbid a gift of immoveable property through favour."--Chapter I, section 1, verse 21. The decision of the lower Court is correct and the appeal must be dismissed with costs.