

(1878) 03 CAL CK 0020

Calcutta High Court

Case No: None

Suddurtonnessa and
Another

APPELLANT

Vs

Majada Khaton and
Another

RESPONDENT

Date of Decision: March 21, 1878

Citation: (1878) ILR (Cal) 694

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

Bench: Division Bench

Judgement

Markby, J.

It is impossible to say that the judgment of the lower Appellate Court in this case was erroneous in law, unless we go to the length of saying that a Judge is bound, as a matter of law, to apply to a Mahomedan family living jointly all the rules and presumptions which have been held by this Court to apply to a joint Hindu family. Now we are not prepared to go to that length. When a Mahomedan family adopts the customs of Hindus, it may do so subject to any modification of those customs which the members may consider desirable; and it must rest with the Judge who has to decide each particular case how far he should apply the rules of a Hindu joint family to the case of any Mahomedan joint family that comes before him.

2. With regard to the case quoted *Vellai Mira Ravuttan v. Mira Moidin Ravuttan* 2 Mad. H.C. Rep. 414--we have no reason to doubt that it was a perfectly proper decision with reference to the facts then before the Court. The Court does not there say anything contrary to what I have just now laid down as the law in this part of the country. Although in that particular case the Court, sitting as a Court of regular appeal, did apply to the acquisition of a manager on the part of a Mahomedan joint family the same presumption as applies to the manager of a Hindu joint family, they nowhere say that that must be done in all cases. We cannot say that because the Subordinate Judge does not apply that presumption to this case his judgment is

erroneous in law. We cannot, therefore, interfere, with his judgment in special appeal.

3. The appeal must be dismissed with costs.