

Before Mr. Justice Pigot and Mr. Justice O'Kinealy.

GOPAL CHUNDER NATH COONDOO AND OTHERS (PETITIONERS) APPELLANTS v. HARIDAS CHINI AND ANOTHER (OPPOSITE PARTY) RESPONDENTS.*

1885

February 26.

Hindu law—succession—spiritual benefit—Father's brother's daughter's son—Father's father's brother's son—Act XXVII of 1860—Certificate.

The father's father's brother's son of a deceased person stands nearer to him in right of succession than his father's brother's daughter's son; the former is therefore preferentially entitled, on the death of the deceased person's widow, to a certificate under Act XXVII of 1860, enabling him to collect the debts due to the estate.

In this case Gopal Chunder Nath Coondoo and others applied to the District Judge of Hooghly for a certificate to enable them to collect the debts due to one Kamini Dossee, deceased, the widow of one Pertab Chunder Coondoo. The applicants were the father's father's brother's sons of Pertab Chunder Coondoo. The application was opposed by Haridas Chini and another who claimed a preferential right to the certificate as being the father's brother's daughter's sons of Pertab Chunder Coondoo. The District Judge ordered the certificate to issue to Haridas Chini and the other objectors, holding that the degree of relationship in which they stood was nearer than that of the applicants in respect of right of succession. The Judge referred to *Guru Gobind Shaha Mundal v. Anand Lal Ghose Mazumdar* (1) and the *Daya' Krama Sangraha*, Chap. I, s. 10. The applicants appealed to the High Court.

Baboo Troilokhonath Mitter, Baboo Aushotosh Dhur, and Baboo Umakali Mookerjee for the appellants.

Baboo Hem Chunder Banerjee and Baboo Boido Nath Dutt for the respondents.

The judgment of the Court was delivered by

PIGOT, J.—We think the appeal must succeed on the authority of the cases cited before us, namely, *Gobind Pershad Talookdar*

* Appeal from Order No. 221 of 1884, against the order of J. P. Grant, Esq., Judge of Hooghly, dated the 30th June 1884.

(1) 5 B. L. R., 15.

1885

GOPAL
CHUNDER
NATH
COONDOO
v.
HARIDAS
CHINI.

v. Mohesh Chunder Surmah Ghuttack (2), and *In re Oodoy Churn Mitter* (3), the case mentioned in the note to that case, *viz.*, *Juggut Narain Singh v. The Collector of Mandhoom*, heard before the present Chief Justice, and the three unreported cases mentioned to us in which the same principle was adopted. The appellants, who are related to the great-grand-father, through the male line, are, for the reasons referred to in the judgment in *Gobind Pershad Talookdar v. Mohesh Chunder Surmah Guttaok*, (2), entitled to the certificate here in preference to the respondents who claim through a succession of persons one of whom was a female.

The order of the lower Court must be reversed, and a certificate must be granted to the appellants. The Judge of the Court below must determine any question as to security, as he may think fit. The appellants will have their costs.

Order reversed.

APPEAL FROM ORIGINAL CIVIL.

Before Sir Richard Garth, Knight, Chief Justice, and Mr. Justice Wilson.

1885

January 5.

MUTTY LOLL (PLAINTIFF) *v.* CHOGEMULL (DEFENDANT)*

Hundi—Liability of drawer—Time of presentation—The custom of Alchoiteej at Jeypore—Section 61 of the Negotiable Instruments Act (Act XXVI of 1881).

A *hundi*, was drawn in Calcutta upon a firm at Jeypore, and made payable on arrival at the place. The *hundi* reached Jeypore on the 5th April; but was not presented for payment until the 29th of that month; when it was dishonored, and soon after the drawees' firm became insolvent: *Held*, that the *hundi* was presented within *reasonable time*, and the delay which occurred in its presentation did not absolve the drawers from liability.

In considering the question whether a *hundi* has been presented within *reasonable time*, regard should be had to the situation and interests of both drawer and payee, and to the distance of the place where the *hundi* is drawn from that where it is to be accepted.

THIS was an appeal from a decision of Mr. Justice Cunningham, dated the 29th January 1883. The plaintiffs at Calcutta purchased from the defendants a *hundi*, dated the 31st

* Regular Appeal No. 3 of 1883, against the decree of Mr. Justice Cunningham, dated the 29th of January 1883.