

1869

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the award that the arbitrators did not consider that the widow's evidence made out the plaintiff's claim to the 8-pie share. Having decided that the plaintiff's claim had not been made out by the evidence of the widow, the arbitrators went into other evidence, and gave plaintiff a decree for the 8-pie share on the evidence taken by them. That portion of the award which gave the plaintiff the 8-pie share, was properly held by the Subordinate Judge not to be binding. If the arbitrators had determined the case according to the terms of the submission, they would have decided that the plaintiff had failed to establish claim to the 8-pie share. We do not think that we ought to remand the case to the Subordinate Judge, for the purpose of taking further evidence, to enable the plaintiff to establish that which the widow's evidence failed to prove before the arbitrators; for it was the intention by both parties, when they referred the case, that it should be determined upon the evidence of the widow alone.

We think that the decision of the Subordinate Judge ought to be affirmed with costs.

Before Mr. Justice Loch and Mr. Justice Hobhouse.

SRIMATI DURGADASI DEBI (PLAINTIFF) v. JADUNATH

MOOKERJEE (DEFENDANT)*

1869
Feb. 11.

Certificate—Act XXVII. of 1860—Limitation.

A Hindu woman applied for a certificate of administration under Act XXVII. of 1860, to the estate of her brother, who had died 7 years before, and whose property had since been in the possession of his so-called heir-at-law. The applicant alleged that at the time of her brother's death, she was pregnant, and subsequently gave birth to a son, who died in infancy. As representative of that son, who was deceased's legal heir, she asked for the certificate. The lower Court summarily rejected her application on the ground of lapse of time. *Held*, that this was not a sufficient reason for rejecting the application, and that the Judge must proceed to an enquiry under the Act.

Baboo Purna Chandra Shome for appellant.

Baboo Ananta Chandra Ghosal for respondent.

The judgment of the Court was delivered by

LOCH, J.—The appellant, as sister to one Thakurdas Bhattacharji, applies for a certificate under Act XXVII. of 1860, to enable her to collect the debts due to the estate of the deceased. The deceased died about 7 years ago, and the whole of his property was taken possession of by the respondent, Jadunath Mookerjee, the so-called heir-at-law, who was the son of deceased's father's sister. The appellant now urges that at the time of her brother's death she was pregnant, and subsequently gave birth to a son, who died in infancy, and

* Miscellaneous Regular Appeal, No. 493 of 1863, from a decree of the Judge of the 24-Pergunnas, dated the 17th August 1868.

that as representative of that son, who was the legal heir of Thakurdas, she is entitled to the certificate.

The Judge has rejected the application, holding that, after the lapse of so many years, it is preposterous to ask the Court to declare, on a summary enquiry, that the applicant is entitled to oust from possession the person whose rights she has hitherto not disputed.

An appeal has been preferred, on the ground that the Judge was wrong in refusing the application for certificate on the ground of lapse of time, and a decision of a Division Bench of the High Court, in *Pulash Monee Dosse v. Anund Moyee Dossee* (1), is quoted in support; and it is prayed that the Judge may be directed to take the evidence of the appellant's witnesses to prove the truth of her statement that she was pregnant when her brother died, and that she subsequently gave birth to a son.

The relationship between the appellant and deceased is admitted; and as the reason assigned by the Judge for refusing to give the appellant a certificate under Act XXVII. of 1860 does not appear to the Court to be sufficient, we remand the case to the Judge, with directions to him to allow the appellant to produce evidence in support of her allegation; and should that, in his opinion, be sufficient to prove the fact asserted by her, he will then apply the law to the case and pass orders accordingly. The costs to follow the result of the enquiry.

1869

SRIMATI
DURGADASI
DEBI
v.
JADUNATH
MOOKERJEE.

Before Mr. Justice Norman and Mr. Justice E. Jackson.

LACHMAN PRASAD (PLAINTIFF) v. HOLAS MAHTOON AND OTHERS
(DEFENDANTS.)

1868
Feb'y 12.

Bhoulí Rent—Valuation of Crop.

A landlord sued his tenant, paying rent in kind, for the share of the crop due to him, or rent, or for its money equivalent.

Held, that the prices at which the landlord was entitled to have the crop valued were those which prevailed at the time the crop was cut, and when it should have been made over to him

Baboos *Debendra Narayan Bose* and *Kali Krishna Sen* for appellant.

Baboo *Mohini Mohan Roy* for respondent.

The judgment of the Court was delivered by—

NORMAN, J.—This is a suit to recover bhoulí rent, or a sum equivalent to the value of the proportion of the crop which the defendant ought to have handed over to the plaintiff, his landlord. The Deputy Collector, after ascertaining what was the quantity of each species of grain which should have

Special Appeal, No. 1498 of 1868, from the decree of the Judge of Bhagulpore, dated the 4th March 1868, modifying a decree of the Deputy Collector of Monghyr, dated the 27th December 1866.

(1) A. W. B., 390.