

APPELLATE CIVIL.

Before Mr. Justice White and Mr. Justice Prinsep.

IN THE MATTER OF THE PETITION OF OODOYCHURN MITTER.*

1878

Aug. 1.

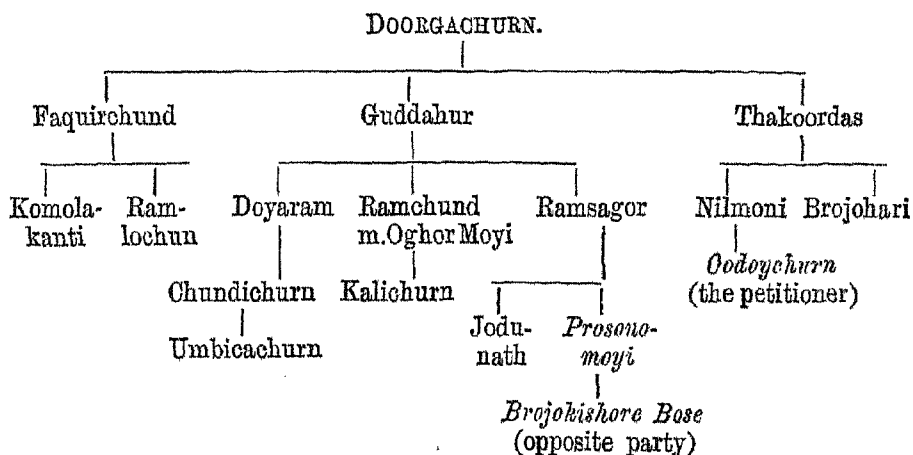
Certificate to collect Debts, Right to—Act XXVII of 1860—Proximity of Residence and Kinship.

Proximity of residence and^o of kinship are not such considerations as should warrant a Judge in granting a certificate under Act XXVII of 1860 to any person in preference to another who has *primâ facie* the better title to the beneficial ownership of the debts.

Adopting the principle laid down in the case of *Gobind Persad Talookdur v. Mohesh Chunder Surmah Ghuttack* (1) a father's brother's grandson has a right to obtain a certificate under Act XXVII of 1860 in preference to a brother's daughter's son.

THIS was originally an application made before the District Judge of Hooghly for a certificate under Act XXVII of 1860 to collect the debts of one Oghor Moyi, deceased, the widow of one Ramchund, who was the grandson of the common ancestor of the family: the application was opposed by one Brojokishore Bose.

The following is the genealogical table of the family (the names in italics, designating those of the family who were living at the time of the application):—



From the above it appears that the common ancestor of the family was one Doorgachurn; the deceased person whose debts

* Appeal from Original Order, No. 142 of 1878, against the order of J. P. Grant, Esq., Judge of Zilla Hooghly, dated the 19th of February 1878.

(1) 15 B. L. R., 35; S. C., 23 W. R., 117.

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it was sought to collect being Oghor Moyi, the widow of Ramchund, the petitioner for the certificate one Oodoychurn, Ramchund's father's brother's grandson, whilst the petition was opposed by Brojokishore, Ramchund's brother's daughter's son.

The District Judge found that Brojokishore was only four steps removed from Kalichurn, from whom the property flowed, whilst Oodoychurn was six steps removed from him, and that inasmuch as Brojokishore lived in the very village in which the deceased's estate lay, and Oodoychurn lived in the extreme south of the district, the former was in a better position to realize the debts with convenience to the debtors of the estate: he therefore directed that a certificate should issue to Brojokishore empowering him to collect the debts due to the estate, on his making an application to that effect in fifteen days.

From this order Oodoychurn appealed to the High Court.

Baboo *Grija Sunkur Mojomdar* for the appellant.—Oodoychurn is the grandson of Kalichurn's grandfather's brother, and as such, under Hindu law, is a preferable heir to Kalichurn's father's brother's daughter's son. The Judge below, in determining the nearness of kin, ought to have considered that Oodoychurn was born of the paternal line, whilst Brojokishore came of the maternal line. He has decided the question on the nearness of kindred and nearness of residence. We offer "the funeral cake" through two male ancestors on the paternal side, whilst the respondent does so through three males, but on the maternal side. Further, no security was taken when the certificate was granted. The cases of *Gobind Persad Talookdar v. Mohesh Chunder Surnah Ghattack* (1) and an unreported case—*Juggut Narain Singh v. The Collector of Manbhoom*—Special Appeal, No. 208 of 1875, decided by Garth, C. J. and Morris, J., on the 31st May 1877 (2) were relied on.

Baboo *Bhugobutty Churn Ghose* and Baboo *Bhobany Churn Dutt* for the respondent cited the case of *Guru Gobind Shaha Mandal v. Anand Lal Ghose Mozumdar* (3).

(1) 15 B. L. R., 35; S. C., 23 W. R., 117.

(3) 5 B. L. R., 15; see Sir B. Peacock's judgment, p. 46.

(2) See foot-note, next page.

Baboo *Grija Sunkur Mozoomdar* in reply.—The case of *Guru Gobind Shaha Mandal v. Anand Lal Ghose Mozumdar* (1) does not apply, as the person there stood in a lower degree of relationship than in the present case. He could not offer “the funeral cake;” he was beyond the three recognized degrees of father, grandfather, and great grandfather, and so without the limit.

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The judgment of the Court was delivered by

WHITE, J.—We think that the order of the Judge in this case must be set aside. There were rival claimants, both of them were very distant relations of Kalichurn, to whose heirs the debts belonged. The Judge has decided the rival claims upon a consideration, *first*, of the nearness of kinship, and, *secondly*, of the nearness of residence, of the party who succeeded before him to the place where most of the debtors reside. We think that he is wrong in this. Neither of the above considerations warranted the Judge in awarding the certificate to the respondent in preference to the appellant, who has *prima facie* the better title to inherit to Kalichurn, and consequently to the beneficial ownership of the debts. A recent authority which is cited to us—the case of *Gobind Persad Talookdar v. Mohesh Chunder Surmah Ghuttack* (2)—shows that the present appellant has the preferable title, and that decision appears to have been followed by the Chief Justice and Mr. Justice Morris in Special Appeal No. 208 of 1875, decided on the 31st May 1877 (3).

(1) 5 B. L. R., 15; see Sir B. Peacock's judgment, p. 46.

(2) 15 B. L. R., 35; S. C., 23 W. R., 117.

(3) THE 31ST MAY 1877. Baboo *Unnoda Persad Banerjee* for the respondent.

Before Sir Richard Garth, Kt., C. J., and
 Mr. Justice Morris.

JUGGUT NARAIN SINGH v. THE
 COLLECTOR OF MANBHOOM.*

THE facts of the case are sufficiently set out in the following judgment of:—

Baboo *Girish Chunder Chowdhry* for the appellant.

GARTH, C. J.—The plaintiff is the brother's daughter's son of the last

* Special Appeal, No. 208 of 1875, from a decision passed by the Judicial Commissioner of Zilla Chota-Nagpore.

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We do not intend by this decision to decide definitely (in fact, we have no jurisdiction to do so) as to who has really the best title to the property. We content ourselves by saying that the applicant, upon the authorities as they now stand, has the better title.

We shall, therefore, set aside the order appealed against, and direct that the certificate be granted to the appellant upon his giving security to the satisfaction of the Judge to the extent of the amount of the debts sought to be collected.

The appellant is entitled to the costs of this appeal.

Appeal allowed.

owner of the property in suit, and the defendant's father was the great grandson of the grandfather of the deceased.

The question in the case is, which of these two persons is entitled to inherit the property of the deceased, according to the rule of the Bengal school of the Hindu law of inheritance?

Precisely the same question was raised in the case of *Gobind Persad Talookdar v. Mohesh Chunder Surmah Ghuttack* (1), quoted by the lower Court, where the Court decided in favor of the great grandson of the grandfather. The conclusion at which the learned Judges arrived in that case seems to be quite in accordance with the leading authorities, and we consider that we are bound to follow it.

In chap. xi of the *Dayabhaga*, and of the *Dayatattwa*, the rule of inheritance to the estate of a person who dies without male issue is specifically laid down; and the several heirs, from the wife down to the daughter's son of the great grandfather, are all enumerated seriatim.

In this series the grandfather's great grandson is mentioned, but the brother's daughter's son is not. Therefore, according to these authorities, the latter should be postponed to the enumerated heirs.

We consider, therefore, that the conclusion arrived at by the Judicial Commissioner is correct. The appeal is dismissed with costs.

Appeal dismissed.

(1) 15 B. L. R., 35; S. C., 23 W. R., 117.