

(1889) 04 CAL CK 0006
In the Calcutta High Court

Bonwari Lal Roy

APPELLANT

Vs

Khudiram Mookerjee

RESPONDENT

Date of Decision : 11-04-1889

Acts Referred:

Citation : (1889) ILR (Cal) 584

Hon'ble Judges : Beverley, J; Banerjee, J

Bench : Division Bench

Judgement

Banerjee, J.—This is an appeal against the order of the District Judge of Burdwan, appointing the respondent as the guardian of a minor Hindu widow; and the only question raised before us is whether the respondent, who is the brother of the minor, or the appellant, who is her husband's sister's son, and the reversionary heir, has the preferential right to the certificate.

2. It appears that a certificate had been granted to the minor's mother-in-law which was subsequently recalled by reason of her unfitness to manage the property owing to her extreme old age; and the only reason assigned by the learned Judge for giving preference to the minor's paternal relations seems to be the fact of a certificate having once been granted to one of her husband's relations and of its having been subsequently recalled.

3. That in our opinion would be no good reason for passing over the claims of other relations on her husband's side, if no other reason is made out against them, and if under the Hindu law they are entitled to the certificate in preference to the widow's paternal relations.

4. Now under the Hindu law, we think that the relations of her deceased husband are entitled to be the guardians of a Hindu widow in preference to her paternal relations. This is clear from the text of Narada, Chapter XIII verses 28 29 cited in the Dayabhaga, Chapter XI, Section 1, paragraph 64 That text runs thus: -" When the husband is deceased, his kin are the guardians of his childless widow In the disposal of the property and care of herself as well as in her maintenance

they have full power. But if the husband's family be extinct, or contain no male, or be helpless, the kins of her own father are the guardians of the widow, if there be no relations of her husband within the degree of a sapinda." This text has been followed in three cases one to be found in Macnaghten's Principles and Precedents of Hindu Law Volume II, page 203; another, Kitten Mohan Mittter v. Khettermoni Dassi 2 Hay 196, Marsh. 313; and a third, the case of Bat Kisar v. Bat Gunga 8 Bom. A.C. 31.

5. This we think is ample authority in support of the appellant's contention, and the certificate in this case ought therefore to be granted to the appellant against whose fitness nothing has been said.

6. The result is that the appeal will be allowed with costs.