

(1887) 06 CAL CK 0016
In the Calcutta High Court

Ganga Prasad Chowdhry

APPELLANT

Vs

Umbica Churn Coondoo and Others

RESPONDENT

Date of Decision : 17-06-1887

Acts Referred:

Citation : (1887) ILR (Cal) 754

Hon'ble Judges : Tottenham, J; Norris, J

Bench : Division Bench

Judgement

1. Baboo Ashotosh Dhur for the appellant before us admits the informality of the plaint in that suit. He admits that technically the widow was no party to it, but asks us to hold that substantially she was a party and was bound by the decree, and that consequently the sale held in execution of that decree did pass the property to the plaintiff. He appears to rely to some extent on the hardship of the case in the event of the lower Appellate Court's decree being affirmed, because the mortgage debt was found to be true so far back as 1878, and it is now too late for the plaintiff to bring a fresh suit against the proper party.

2. We are unable to take any notice of the alleged hardship. The only question we have to decide is whether the lower Appellate Court was wrong in law. It appears upon the facts found that it is impossible to say that the Subordinate Judge committed any error. He found not only that the plaint as framed did not make the widow a defendant, but also that the mother Anundomoyee was not shown to have been ever appointed a guardian ad litem on behalf of the minor widow, or to have had permission to defend the suit on her behalf. Various cases were cited by Baboo Ashotosh Dhur in support of his contention. He referred us to Alim Buksh Fakir v. Jhalo Bibi 12 C. 48; Newaj v. Muksud Ali 12 C. 131; Guru Churn Chuckerbutty v. Kali Kissen Tagore 11 C. 402; Hurdey Narain Sahu v. Rooder Perakash Misser 11 I.A. 26 : 10 C. 626; Durga Churn Shaha v. Nilmoney Dass 10 C. 134; and lastly Suresh Chunder Wum Chowdhry v. Jugut Chunder 14 C. 204. Most of these cases appear to us to be not in point. They do not deal with the special case before us. Guru Churn Chuekerbutty v. Kili Kissen Tagore 11

C. 402 is against the appellant's contention. It was there held that a decree in a suit where minors were defendants, and were not specifically named as defendants, would not bind the minors. The Full Bench decision cited by the appellant's pleader does to some extent seem to support the appellant's case, but there too the case is different. One of the defendants there was described as "Nitro Bashini Chowdhurani, guardian on behalf of her minor son, Suresh Chunder Wum Chowdhry." It appears that the lower Court in that case required the plaintiff to put in an affidavit to the effect that Nitro Bashini really was the mother and guardian of the minor Suresh Chunder, and after that the suit was registered and summons issued. It was held in that case "that, having regard to the orders of the Court and the allegations made in the plaint and written statement, the suit was substantially brought against the minor, and the error of description in the plaint being one of mere form, could not, without proof of prejudice, invalidate a decree against him in the suit." In the present case there were no such orders of the Court. The plaintiff of his own mere motion brought the suit against Anundomoyee, describing her as the mother and guardian of the late Ramnath Acharjee. Upon the findings come to by the lower Appellate Court we are compelled to hold that the decree of the Subordinate Judge dismissing the present suit, upon the ground that the minor widow was not affected by the previous decree, was correct. The appeal is dismissed with costs.