

(1889) 07 CAL CK 0018
In the Calcutta High Court

Jotendronauth Mitter

APPELLANT

Vs

Raj Kristo Mitter and Another

RESPONDENT

Date of Decision : 08-07-1889

Acts Referred:

Citation : (1889) ILR (Cal) 773

Hon'ble Judges : Norris, J

Bench : Single Bench

Judgement

Norris, J.—This is an application to transfer a suit from the Court of the Second Subordinate Judge of the 24-Pergunnahs to this Court. The suit was instituted by a minor through his mother as next friend against his grand mother and uncle. The facts are of an extremely unusual character. The minor plaintiff is the son of one Nilmadhub Mitter, who was convicted last year at the criminal sessions, presided over by WILSON, J., of the murder of his father, Khetter Mohun Mitter, and sentenced to transportation for life. He now sues for partition of the family estate, alleging that his father, by virtue of his conviction, is disentitled to succeed to the estate, being civilly dead, and that he, his infant son, is entitled to step into his father's shoes, and is entitled to a partition. The suit is defended by the widow of the murdered gentleman and by the uncle, the uncle being a minor ; and the defence is that, under Hindu law, the plaintiff is as much excluded from the inheritance as his father, and entitled to nothing more than maintenance. No guardian ad litem has been appointed to the infant in the suit at Alipore, and Mr. Hill objects that the application is not properly framed, because it is made by the next friend instead of the guardian ad litem. This is a new question. I have considered the authorities referred to by Mr. Hill, and am of opinion that the objection ought not to prevail. If a guardian had been appointed, he might have applied ; but none having been appointed, it is open to the next friend to apply.

2. The next question is as to the transfer of the suit. On the evidence, I think I ought to make the order, and I will state the grounds on which I make it. The"

major portion of the property, i.e., 49/85th, is in Calcutta. The remaining, 36/85th, though not within the ordinary original civil jurisdiction of this Court, is in the immediate vicinity of Calcutta. Secondly, if the plaintiff obtains a decree declaring his right to partition, the effect would be to make an Ameen of the Alipore Court the person to partition Calcutta property. I can hardly think of anything more inconvenient than that a Mofussil Ameen should be introduced into Calcutta to partition Calcutta property. In the third place, though I do not lay much stress on this reason, I believe this suit is one which can be more cheaply and expeditiously tried in this Court than in the Mofussil. On the whole, I think, for these reasons, that I ought to make the order.