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**(1915) 06 CAL CK 0010**  
**In the Calcutta High Court**

Kedar Nath Banerjee and Others

APPELLANT

Vs

Haridas Ghose

RESPONDENT

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**Date of Decision :** 01-06-1915

**Acts Referred:**

**Citation :** 29 Ind. Cas. 790

**Hon'ble Judges :** Lawrence Jenkins, C.J.;N. Chatterjea, J

**Bench :** Division Bench

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## **Judgement**

Jenkins, C.J.—The point in contest in this litigation is whether in a Dayabhaga family, the great-grandfather's son's daughter's son or the maternal uncle is to be preferred. The proposition only has to be stated to make one realize what an amount of learning and industry the problem might demand. We have had the advantage of having the position of the maternal uncle advocated before us by one who is worthily following in the steps of his distinguished father and we can say; much as we regret the absence of Babu Golap, we do not feel we have suffered anything in view of the argument that has been addressed to us.

2. Undoubtedly there are, as Babu Rishendra Nath Sarkar has brought clearly to our notice, a number of considerations that might be brought into play were the matter untouched by authority. But a Full Bench of this Court, as far back as Gooroo Gobind Shaha v. Anund Lal Ghose 13 W.R.49 (F.B.); 5 B.L.R. 15 came to a conclusion as to the principle-of succession in a Dayabhaga family which really governs this case. It has been treated as governing cases of a similar description by other distinguished Judges, whom I name in this particular connection merely because they are Judges who would be particularly familiar with and interested in the question. The learned Judges are Mr. Justice Guru Das Banerji, Mr. Justice Mookerjee and Mr. Justice N.R.Chatterjea. And they one and all have felt that it is not for this Court, at any rate, to question the propriety of that Full Bench decision. In the case of Kailash Chandra Adhikary v. Karuna Natha Chowdhury 19 Ind. Cas. 677 : 18 C.W.N. 477 the contesting parties were in the precise position, curiously enough, of those who are now litigating before us, that is to say, the

contest there was as here: between the great-grandfather's son's daughter's son and the maternal uncle. There it was decided in favour of the great-grandfather's son's daughter's son. And I see no ground on which we can refuse to follow that ruling. The learned Vakil in the course of his argument before us has done his best to depreciate the value of the maxim stare decises. But that is an argument that must be addressed to a higher authority and not to this Court.

3. There was another argument advanced before us, namely, that the possession of Tulsi was such that her existence offers a complete bar against the suit. But that was a point not taken in the lower Courts, no in the original grounds of appeal here. It was a very late development. But obviously the basis of that argument involves an investigation into facts on which it is beyond our competence to embark. We cannot, therefore, give effect to it.

4. As to the first point our decision, in obedience to the authorities, is that the plaintiff who claims under the great-grandfather's son's daughter's son is entitled to succeed. This is in accordance with the view of the learned Subordinate Judge and the Munsif.

5. The result is that the appeal must be dismissed with costs.

6. N. Chatterjea, J.--I agree that the principle of succession governing this case must be taken to have been settled by the Full Bench decision in Goo:oo Gobind Shaha v. Anund Lal Ghose 13 W.R.49 (F.B.); 5 B.L.R. 15. The particular point raised in this case was decided in the case reported as Kailash Chandra Adhikary v. Karuna Natha Chowdhury (2) and I see no reason to alter the opinion which I expressed in that case.