

(1903) 08 CAL CK 0020
In the Calcutta High Court

Nageshwar Prosad Singh

APPELLANT

Vs

Rudra Prokash Singh

RESPONDENT

Date of Decision : 27-08-1903

Acts Referred:

Lunacy Act, 1912 — Section 23

Citation : (1904) ILR (Cal) 210

Hon'ble Judges : Pratt, J; Ghose, J

Bench : Division Bench

Judgement

Ghose and Pratt, JJ.—The short point which arises in this appeal is whether the District Judge was justified in passing various orders which culminated in the deal order of the 11th. October 1901 and which is in these terms: "The nearest relatives on the lists filed will be requested in their order of propinquity to take charge of the property. It will be first offered to Ajodhya Prosad Singh, who is the nearest relative admitted by both sides who has refer yet been objected to." It appears clearly from the proceedings on the record and also from what has been stated by the Judge himself on the 18th January 1902, that Nageshwar Prosad Singh, has never yet been adjudged a lunatic, u/s 7 of Act XXXV of 1858, It is necessary for the Court to adjudge a person to be a lunatic within the meaning of Section 23 of that Act, before an order can be passed as to the management of his property and for the guardianship of his person. In the present case, such an adjudication, has not been come to. We must, therefore, set aside the order of the lower Court and send back the case to the District Judge for disposal according to law. It is clear that the learned Judge cannot proceed upon an admission made by a person who is supposed to be a lunatic, though he would be justified in examining him personally. He must come to a decision upon evidence. Under the circumstances of the case, we direct that Ajodhya Prosad Singh do receive his costs from the appellant. We assess the hearing, fee at one gold mohur. We make no order as regards the costs of the other parties.