

(1868) 11 CAL CK 0001

Calcutta High Court

Case No: Special Appeals Nos. 1081 and 1077 of 1868

Rajib Lochan

APPELLANT

Vs

Bimalamani Dasi and Others

RESPONDENT

Date of Decision: Nov. 11, 1868

Judgement

L.S. Jackson, J.

It appears to us quite clear, that under the circumstances of the case, the sale could not be set aside. Section 258 provides for the refund of the purchase-money when a sale of immoveable property has been set aside under circumstances which, under the provisions of the Procedure Code, authorize such a proceeding; but I am not aware of any authority of law for setting aside a sale, on the ground that the party whose right, title, and interest were sold had no interest at all, or had a less interest than was supposed. We are referred to a decision in the case of Grish Chandra Poddar v. Sukhada Moyi Debi (1 W.R., 55), in which a different doctrine has, no doubt, been held; and if it were necessary, we should have been obliged to refer the question to the decision of a Full Bench. But such reference is not necessary in the present case. It is sufficient to say that, whereas in the case referred to, the sale had been rightly or wrongly set aside, and it was held that, in consequence, the purchaser was entitled to a refund of his purchase-money; in this case, on the contrary, the sale has not been, and, in my opinion, could not be set aside. Consequently, the purchaser is not entitled, u/s 258, to a refund.

2. The special appeal must, therefore, be dismissed with costs. Special Appeal No. 1077, between the same parties, is governed by the same decision.