

**(1928) 05 CAL CK 0025****Calcutta High Court****Case No:** None

Sheikh Sona Mia

APPELLANT

Vs

Sheikh Ajor Ali

RESPONDENT

**Date of Decision:** May 18, 1928**Acts Referred:**

- Registration Act, 1908 - Section 17, 49

**Citation:** 114 Ind. Cas. 416**Hon'ble Judges:** George Claus Rankin, C.J; Mukerji, J**Bench:** Division Bench**Judgement**

George Claus Rankin, C.J.

This is a simple case. It appears from the findings of fact of the lower Appellate Court that, some five years before the suit, the plaintiff sold certain land to the defendant No. 1. He got the purchase-money and he put the defendant No. 1 in possession of the land. He also executed a document of transfer but represented to the defendant No. 1 that it was not necessary to have it registered and the document was not registered. He brings this suit to eject the defendants. The lower Appellate Court has proceeded on this principle: that the 1st defendant's right to bring a suit for specific performance of that contract is now barred by lapse of time; and the Court has accordingly decreed the plaintiff's suit without putting him on any terms whatsoever either as to the refund of the purchase-money or otherwise. The question is whether that is sound law. In my opinion, it is not. Whether or not the decision in the case of *Mahomed Musa v. Aghore Kumar Ganguli* 28 Ind. Cas. 930 : 19 C.W.N. 250 : 17 Bom. L.R. 420 : 21 C.L.J. 231 : 28 M.L.J. 548 : 13 A.L.J. 229 : 17 M.L.T. 143 : 2 L.W. 258 : 42 C. 801 : (1915) M.W.N. 621 : 42 I.A. 1 (P.C.) and in subsequent cases can be reconciled with the language of Sections 17 and 49 of the Indian Registration Act may be a question. But it seems to me that these decisions proceed as much upon the reasoning in the case of *Maddison v. Alderson* (1883) 8 A.C. 467 : 52 L.J.Q.B. 737 : 49 L.T. 303 : 31 W.R. 820 : 47 J.P. 821 as upon the doctrine

of specific performance. The reasoning is this: That, although title does not effectively pass without certain requirements of the law being fulfilled and although, in a case like this, the defendant gets only an inchoate title to the property, nevertheless the actings of the parties upon the footing of title to the defendant create an equitable defence in such a case as the present which will prevent the plaintiff from recovering a decree in ejectment. In my judgment, that is the principle which should have been applied as the law at present stands in the present case. For these reasons, I am of opinion that this appeal should be allowed and the plaintiff's suit should be dismissed with costs in all Courts.

Mukerji, J.

2. I agree.