

**(1868) 07 CAL CK 0020**

**Calcutta High Court**

**Case No:** Special Appeal No. 3117 of 1867

Jugal Kishor Banerjee

APPELLANT

Vs

Abhaya Charan Sarma

RESPONDENT

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**Date of Decision:** July 7, 1868

**Final Decision:** Dismissed

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### **Judgement**

L.S. Jackson, J.

This was a suit for the purpose of setting aside the sale of an under-tenure belonging to the plaintiff, made under a decree which, it is alleged, had been obtained by fraud, and which was afterwards partially set aside on the application of one of the parties concerned upon a review of judgment. The Munsiff, before whom the trial first took place, found that fraud had been resorted to in obtaining the decree, and he insinuated, rather than expressly found, that the purchaser was mixed up with that fraud; and on that ground ordered the sale to be reversed. On appeal, the Principal Sudder Ameen recorded his opinion that the plaintiffs have given no satisfactory proof that the defendant Bup Chandra or Khaja Abdul Gunny, has been guilty of any fraud, the former, in purchasing the under-tenure, and the latter in obtaining a decree in the Revenue Court. He, therefore, reversed the judgment of the Court below, and ordered the suit to be dismissed.

2. The plaintiff comes up in special appeal, and urges, that the judgment of the Lower Appellate Court is defective, inasmuch as it sets aside, without any reason being assigned, the finding of the Court below on the question of fraud.

3. The decision of the Principal Sudder Ameen is certainly unsatisfactory, but we observe that, under more than one ruling of this Court, see the case of Chandra Kant Sarma v. Bireswar Sarma Chuckerbutty (7 W.R., 312), and Jan Ali v. Jan Ali Chowdry (1 Ante, 56), the circumstance that a decree under which a sale has taken place, has itself been set aside, will not invalidate the sale; and, consequently, the plaintiff would not be entitled to succeed in a suit like the present, unless he could show that the purchaser was himself a party to the fraud which led to the decree

and sale, in which case, the Court will require him to re-convey the property to the plaintiff. This has not been found, and is scarcely even alleged by the plaintiff in this case. Under these circumstances the plaintiff could not succeed, and the special appeal must be dismissed with costs.