
(1871) 03 CAL CK 0007

Calcutta High Court

Case No: Special Appeal No. 2166 of 1870

Karunamayi Dasi

APPELLANT

Vs

Paran Chandra Pal and
Another

RESPONDENT

Date of Decision: March 13, 1871

Final Decision: Allowed

Judgement

Mitter, J.

We are of opinion that, before the plaintiff can be permitted to recover the disputed property in this case, he is bound to refund to the purchaser, defendant, the full amount of the purchase-money received by him from the latter, the interest upon that amount being set off against the profits realized by the purchaser from the date of his purchase down to that of the refund,--i.e., of the deposit of the principal amount of the purchase-money by the plaintiff. Both the Courts have concurrently found that the sale was deliberately made by the plaintiff at a time when he was sufficiently advanced in years to understand the nature of the transaction, and that he had received the full amount of the purchase-money from the defendant. Although so far as the validity of the sale is concerned, the plaintiff was not quite a major at the time when he executed the conveyance, there is no just reason why he should not refund now to the purchaser the amount of the consideration-money paid by the latter. This, then, the plaintiff must do before he can get back the property. The plea of minority cannot be used to injure third parties, but it can be used only to protect the minor. We think that, under the circumstances, the plaintiff ought to pay to the defendant (the purchaser) the costs of this litigation, and our decree is that the plaintiff should get possession of the disputed property subject to the condition of his paying the amount of the purchase-money to the defendant, or of depositing it in Court, within two months from the date of this decree; the purchaser, defendant, not being held responsible for any profits which he might derive from the property up to that date.

¹ The original plaintiff was one Mani Lal Kundu. He continued as plaintiff in the Courts below, until the present special appeal, when his wife came in and had her name

substituted for her husband, who was alleged to be dead.