

(1870) 01 CAL CK 0021

Calcutta High Court

Case No: Special Appeal No. 1756 of 1869

Mussamat Gosmiah

APPELLANT

Vs

Taffuzzul Hossein

RESPONDENT

Date of Decision: Jan. 21, 1870

Judgement

Macpherson, J.

We remand this case to the first Court for trial on the merits. Section 260, Act VIII of 1859, does not apply to it. That section says:--"The certificate shall state the name of the person who at "the time of sale is declared to be the actual purchaser, and any suit brought against the certified purchaser, on the ground that the purchase was made on behalf of another person, not the certified purchaser, though by agreement the name of the certified purchaser was used, shall be dismissed with costs." In the first instance, the name of the certified purchaser was not used by agreement," but was inserted in the certificate by fraud on the part of the defendant, and contrary to the wishes of the purchaser. The defendant has already been convicted of and punished for the fraud, and there is nothing in section 260 to prevent the suit from being entertained. The case must be remanded for trial, and the costs of this appeal will follow its result.