

(1869) 08 CAL CK 0029
In the Calcutta High Court

Court of Wards

APPELLANT

Vs

Nitta Kali Debi and Another

RESPONDENT

Date of Decision : 07-08-1869

Acts Referred:

Citation : (1869) 08 CAL CK 0029

Judgement

Sir Barnes Peacock, Kt., C.J.—It appears to the, Court that the plaintiffs are entitled to recover the sum claimed, viz., rupees 156-5-6. The defendants agreed that if they should fail to register, the deed they would refund to the plaintiffs that amount the plaintiffs took possession of the land, and it is therefore said that the plaintiffs are not entitled to enforce the agreement. We think that the plaintiffs are entitled to enforce the agreement notwithstanding that they took possession. They may be liable, however, to the defendants to pay them a reasonable amount for the use and occupation of the land during the time that they were in possession. This case appears to me to stand on the same footing as that of a purchaser. If a purchaser should agree to purchase and should pay down the purchase-money, taking an agreement from the vendor, that if he should not register the conveyance, he should return the purchase-money, the purchaser would be entitled to receive his purchase-money back if the vendor should fail to register the conveyance. If the purchaser should have been let into possession of the land agreed to be purchased, he might be liable to the vendor to pay him a reasonable amount for the occupation of the land, but that would depend upon the particular circumstances of the case. In this case there is no set-off pleaded charging that the plaintiffs were indebted to the defendants for the use of the land, and under those circumstances if the defendants are upon the whole facts of the case entitled to any remuneration for the use and occupation of the land, they must resort to a cross action, in which that question, as well as the amount, if any, which they may be entitled to recover, will be settled.

2. The only answer we can give to the Judge of the Small Cause Court is that the defendants were bound to return the money in default of registering the maurasi; and not having registered it, the plaintiffs are entitled to recover the

amount which the defendants stipulated to pay. There will be no costs of the argument before this Court.