

(1870) 02 CAL CK 0003
In the Calcutta High Court

Case No : Application for Review No. 264 of 1869 in Special Appeal, No. 29 of 1869

Panchanan Mookerjee

APPELLANT

Vs

Radha Nath Mookerjee and Others

RESPONDENT

Date of Decision : 16-02-1870

Acts Referred:

Citation : (1870) 02 CAL CK 0003

Judgement

Loch, J.—We are asked to reverse our judgment of the 24th June 1869, on the ground, that, since the case was disposed of, the special appellant has discovered fresh evidence, material to the issue between the parties, which was not within his knowledge, and could not be adduced by him at the time the decree was passed. It appears to me, even if this allegation be satisfactorily proved, that it is not a sufficient ground for asking for a review of a special appeal. In disposing of a special appeal, the duty of this Court is to determine whether the judgment of the Court below is contrary to law, or usage having the force of law, or whether there has been a substantial error or defect in law in the procedure or investigation of the case, which may have produced error or defect in the decision of the case upon the merits, and on no other ground. Looking to the record as it came before the lower appellate Court, we did not think that the Subordinate Judge had committed any such error as is described above, and we dismissed the special appeal. Now we are asked to review that order, on the ground that fresh evidence has been discovered. That might be a good ground for asking the lower Courts, which deal with the facts of a case, to admit a review, but it does not appear to me a sufficient ground for admitting a review of a judgment in special appeal, for we cannot look into the evidence offered, and are consequently unable to determine whether it has, or has not, any bearing on the case, and can affect the decision of the lower Court on the merits, and we cannot I think receive it and then direct the lower Courts to determine its value. I think the application for review should be rejected.