

**(1887) 12 CAL CK 0005**  
**In the Calcutta High Court**

Pearisundari Dassee

APPELLANT

Vs

Hari Charan Mozumdar Chowdhry

RESPONDENT

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**Date of Decision :** 05-12-1887

**Acts Referred:**

**Citation :** (1888) ILR (Cal) 211

**Hon'ble Judges :** Wilson, J;W. Comer Petheram, J;Tottenham, J

**Bench :** Full Bench

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### Judgement

Wilson, J.—(Petheram, C.J., and Tottenham, J. concurring).--We think the appellant is entitled to succeed on this appeal. The facts shortly are . these The intending purchaser of certain property, who had paid a portion of his purchase-money, obtained a decree for specific performance against the vendor; but after decree it became apparent that the vendor had made it impossible for the purchaser to carry out the decree.

2. The question now is, has the appellant any remedy. He moved the lower Court to have the matter re-heard on the new state of things, and asked to be allowed to establish his right to recover back his purchase-money. The learned Judge in the Court below refused the application, holding that the case is not one in which a review of judgment can be allowed. To me it seems that this is not a matter of review. That is a remedy to be applied for by the person against whom a decree or order has been made. It appears to me that the mass of authority collected in the work of Lord Justice Fry on Specific Performance, in the cases set out and explained in Chapter IV, Sections 1138 to 1145, establish that a decree for specific performance being not in the fullest sense a final decree, but one in a suit which is still pending, if the person against whom the decree has been made refuses to carry out, or has rendered himself incapable of carrying out that decree, the person in whose favour the decree was made may bring the facts before the Court, and ask for that alternative relief to which the circumstances of the case appear to entitle him. That doctrine in my opinion applies here. I think the learned Judge was wrong in deciding as he did, and I therefore think this

case must go back to him to be heard on the merits of the application. Costs to abide the result.