

(1887) 06 CAL CK 0024
In the Calcutta High Court

Sharup Chand Mala Sharup Chand Mala	APPELLANT
Vs	
Pat Dassee	RESPONDENT

Date of Decision : 10-06-1887

Acts Referred:

Citation : (1887) ILR (Cal) 627

Hon'ble Judges : W. Comer Petheram, C.J

Bench : Single Bench

Judgement

W. Comer Petheram, C.J.—This is an application to admit to review a judgment passed in March last by my brother Cunningham and myself, and the ground for the application is that there is a manifest error in law on the face of the judgment, because it is absolutely in conflict with a judgment of the Privy Council delivered in the month of July of last year, and which appeared in the January number of the Law Reports of this year, and which consequently was in existence and known in this city when the case was argued and judgment given, but was not cited in the argument before us. Now I have not the slightest doubt that if there is an error in law on the face of a judgment, or if it is shown that the decision of the Court has proceeded upon a mistaken view of the law, that is a ground for review of judgment if it be necessary for the ends of justice that the judgment should be reviewed. These are the words used by Mr. Justice Norman in a case which was cited before us ; and if for any reason it could be shown to me that any judgment of mine was wrong in fact on a point of law, and that there was any danger whatever that the ends of justice would be defeated, or that justice would not be done by reason of that error, I should be the first man to set it right; but I do not think that in this particular case there is any necessity whatever for reviewing our judgment. In the first place, if there is an error, it is an error of law, which was just as great an error at the time the judgment was passed, and as apparent then as it is now, because the law, if the case now relied upon had then been brought before us, was just as clear at the time as it is now. I am not prepared to say whether, if it had been cited before us, this decision of the Privy Council might or might not have changed my view of this

particular case; and I am not prepared to say that the decision of this case was wrong in law, because the facts of the case before the Privy Council were not the same as the facts of the case before us. The case before the Privy Council was one in which the decree was not satisfied, but this is a totally different case. If, however, as I said before, I thought that there was any danger from any possible error of law that the ends of justice would be defeated, I would have no hesitation in granting the review; but I do not think in this case that, whether the decision on the law is right or wrong, there is any danger at all that justice will not be done. The only question is, which of two innocent persons is, not to bear a loss, but to be put to his remedy against a third person for the recovery of a certain sum of money ; there is no question of that money having to be recovered from a person unable to repay it; there is no question that the judgment-debtor has paid the money and satisfied the decree ; and no question that there is a remedy against the fraudulent decree-holder to recover that money by the person who purchased the property at the auction sale held at the instance of the decree-holder on a decree which had already been satisfied.

2. Under these circumstances I do not think it necessary in this case, whether there is or there is not any error in law, that this judgment should be reviewed, and I therefore refuse to admit the review.

3. The opposite party will be entitled to recover the costs of this hearing from the petitioner.