Privy Council Appeal No. 14 *of* 1925.

Bengal Appeal No. 5 *of* 1924.

Lakshman Chandra Mandal - - - - - - - *Appellant*

v.

Takim Dhali and others - - - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 11TH MAY, 1926.

Present at the Hearing:

VISCOUNT DUNEDIN.
LORD ATKINSON.
MR. AMEER ALI.

[*Delivered by* VISCOUNT DUNEDIN.]

The appellant-plaintiff in the case is the purchaser of two-thirds of a certain leasehold property which he says originally belonged to Idu Sana from whom his vendors are descended, in right of two sons of Idu Sana, and he sues the defendant-respondent who is in possession, he having acquired the whole property from Budhai the other and remaining son of Idu Sana.

The whole point in the appeal therefore depends upon whether the leasehold in question was originally settled with Idu Sana who was the head of the whole family here represented, or whether it was originally settled with one of his sons Budhai. Budhai was undoubtedly in possession, and it was necessary for the plaintiff to prove his case. He attempted to do so by bringing forward certain statements that were made in various litigations that had happened, but upon looking into those litigations the learned Judge of first instance and the High Court both came to the conclusion that the statements made were absolutely contradictory and therefore no affirmative proof for what the plaintiff wished to deduce from them. The oral evidence suffered the same fate; it was contradictory and was not believed and accordingly, there again, we have concurrent findings that the plaintiff has not made out his case. That really disposes of the merits of the case.

There is a second branch of the case as launched in which the disappointed purchaser owing to the result of what has been narrated, asks for repayment of the price which he has paid. It is quite clear that that point was never really investigated in the Courts below. It has never been gone into as to whether it was a truly speculative purchase or a purchase under such circumstances as would warrant a good title. and accordingly the learned Subordinate Judge said he could not decide the matter. but gave leave to the plaintiff to raise the question in a separate suit. That also was confirmed by the High Court.

Their Lordships will therefore humbly advise His Majesty to dismiss the appeal with costs.

In the Privy Council.

LAKSHMAN CHANDRA MANDAL

v.

TAKIM DHALI AND OTHERS.

DELIVERED BY VISCOUNT DUNEDIN.

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