

(1921) 08 CAL CK 0054
In the Calcutta High Court

Rash Behari Gangully

APPELLANT

Vs

Shabharanjan Samaddar and Others

RESPONDENT

Date of Decision : 10-08-1921

Acts Referred:

Citation : 64 Ind. Cas. 1001

Hon'ble Judges : N.R. Chatterjea, J;Cuming, J

Bench : Division Bench

Judgement

1. This appeal arises out of a suit for specific performance of a contract.
2. It appears that there was an agreement between the members of the family to which Koilas, father of the defendants Nos. 1, 2 and 3, and the plaintiff belonged, that if any one of them had to sell any portion of the family property, he must offer it for sale in the first instance to the other members of the family; in other words, there was a right of pre-emption given by the agreement. It was stipulated that the agreement would be binding upon the parties and their heirs.
3. The Courts below have held that it was not a valid agreement which could be enforced; and the only question we have to consider is whether it was so.
4. Now, a covenant for pre-emption which is unlimited in point of time is void on the ground that it is obnoxious to the rule against perpetuities. [See the cases of Sreemutty Tripoora Soonduree v. Juggur Nath Dutt 24 W.R. 321, Nobin Chandra Soot v. Nabab Ali Sarkar 5 C.W.N. 343, Kolathu v. Ranga Vadhyar 18 Ind. Cas. 203 : 24 M.L.J. 84 : 13 M.L.T. 179 : (1913) M.W.N. 163 : 38 M. 114 and the recent case of Nabin Chandra Sarma v. Rajani Chandra Chakravarti 63 Ind. Cas. 196 : 25 C.W.N. 901.]
5. Having regard to the rule against perpetuities, it is unnecessary to consider the question whether the covenant is a personal one or is enforceable against the heirs of the contracting parties. The appeal accordingly fails and is dismissed with costs.