(1923) 03 AHC CK 0040

Allahabad High Court

Case No: None

Raghubar Singh		APPELLANT
	Vs	
Balli Singh and Sheo Nath Rai and Others		RESPONDENT

Date of Decision: March 28, 1923

Citation: (1923) ILR (All) 492

Hon'ble Judges: Piggott, J; Muhammad Rafiq, J

Bench: Division Bench

Final Decision: Disposed Of

Judgement

Muhammad Rafiq and Piggott, JJ.

The two appeals Nos. 936 and 937 of 1921 arise out of two suits in which the pre-emptor is one and the same person. Both of them raise the same points and were disposed of by one judgment by the learned Judge of the lower appellate court. We propose to dispose of both the appeals by this judgment. It appears that Sheonath Rai, Ram Shankar Lal and Dharam Govind were co-sharers in the village of Dilwanspur in the district of Mirzapur, and they executed two sale-deeds on the 31st of October, 1919, in favour of three persons. One sale-deed was executed in favour of Chhedi and Gursaran in lieu of Rs. 2,780 in respect of a portion of the property owned by the Vendors, and the other deed of sale was executed in favour of Balli Singh by the same vendors in respect of another item of property in lieu of Rs. 1,853. Kaghubir Singh, who is a co-sharer in the village, instituted two suits, out of which these two appeals have arisen, for the recovery of two items of property conveyed by the deeds of the 31st of October, 1919, by right of preemption. It was stated in the plaint that the custom of preemption prevailed in the village. During the pendency of the two suits in the court of first instance, the status of two persons at least was changed, Balli Singh succeeded in getting a deed of gift in his favour in respect of a certain item of property in the same village, and Raghubir Singh, the pre-emptor, was appointed lambardar of the village, prior to the decrees of the first

court. Both parties gave evidence in support of their respective allegations. The learned subordinate judge, who tried the two suits, came to the conclusion that the plaintiff pre-emptor had /ailed to prove his allegation of custom. The learned judge, however, found that the revenue paper which he describes as wajib-ul-arz of 1290 F., i.e., 1883, and which was signed by all the co-sharers, contained a covenant with regard to pre-emption. He, therefore, enforced the terms of the wajib-ul-arz as a contract binding not only upon the signatories to the contract but upon their heirs and representatives also. The claim of Kaghubir Singh was decreed in both the suits. On appeal the learned District Judge affirmed the decrees of the first court.

2. In second appeal before us it is contended by the vendees that the wajib-ul-arz of 1290 F., i.e., 1883, if a record of contract, would not bind the heirs and the legal representatives of the signatories of that document. It appears that the village of Dilwanspur is permanently settled. There was no settlement in 1883 but there was a revision of records. At the time of the revision of records a statement was made by the co-sharers at that time that they would give each other preference in case of transfer over a stranger. The village being permanently settled, no time is fixed for the revision of records. No revision has taken place up to this time since 1883. The contention for the vendees appellants is that if the document of 1883 was a contract between the signatories to that document, the contract expired with their deaths. On the other hand, if it be said that the signatories to that document entered into a covenant which would bind them and their heirs and legal representatives for an indefinite period, such a covenant is bad in law as if contravenes the rule of perpetuities. Various authorities have been cited in support of this contention, namely, Sreemutty Tripoora Soonduree v. Juggur Nath Dutt (1875) 24 W.R. 321 Nobin Chandra Soot v. Nabob Ali Sarkar 5 CWN 343 Nabin Chandra Sarma v. Jiajani Chandra 25 CWN 901 Gurunath Balaji Mutalik Deshpande v. Yamanava Kom Nalarav Divan ILR (1911) 35 Bom. 258 and Kolathu Ayyar v. Ranga Vadhyar ILR (1912) Mad. 114. On behalf of the respondent pre-emptor reliance is placed on the case of Avula Charamudi v. Marriboyina Raghavulu ILR (1915) Mad. 462. The observations of the learned Judges in the latter case are relied upon by the learned Counsel for the pre-emptor in support of his contention that the contract embodied in the document of 1883 is binding upon the present co-sharers of the village. The balance of authority appears to us to be on the side of the vendees, i.e., the appellants before us. We cannot do better than to reproduce here the observations of the learned CHIEF JUSTICE of Bombay made in the case of Dinkarrao Ganpatrao Kothare v. Narayan Vishwanath Mandalik ILR (1922) 47 Bom. 191 which were as follows:

Although contracts for the sale of land which can be specifically enforced immediately or contracts creating a right of pre-emption which cannot be specifically enforced until the proper occasion arises in the future do not according to the law in India create an interest in land either equitable or executory, they do create rights which are capable of being enforced with regard to the land in certain circumstances against third parties, and to that extent they are not ordinary

personal contracts and stand in a category by themselves. The question thus arises whether the principle which underlies the rule of perpetuities made applicable to this country by Section 14 of the Transfer of Property Act should be applied to this class of contracts." (p. 206).... "The law in England and in India is substantially the same with regard to the enforcement of contracts in respect of lands. The only difference is that in England the owner of the equitable interest is considered as the owner of the property contracted to be conveyed. But no such result can follow from a contract creating an executory interest. If such a contract purports to do by indirect means what the law forbids to be done directly, it is void and the principle is the same in India as in England." (p. 210).

3. We accept these observations as correctly describing the nature of the contract which is the subject-matter of discussion in the present appeals. We are, therefore, of opinion that the contract mentioned in the wajib-ul-arz of 1883, upon which reliance is placed by the courts below in discussing the claim of the plaintiff pre-emptor, is not one which can be enforced now. We, therefore, allow the two appeals, set aside the decrees of the courts below and dismiss the claim of the plaintiff pre-emptor with costs throughout.