

(1869) 03 CAL CK 0009

Calcutta High Court

Case No: None

Prankisto Dutt

APPELLANT

Vs

Anand Chandra Ghose
and Others

RESPONDENT

Date of Decision: March 23, 1869

Judgement

Sir Barnes Peacock, Kt., C.J.

1. It appears to me that the purchaser was not bound by this contract. A joint tenant may covenant that he will not sue out a writ of partition, but that would not prevent him from selling his interest in the estate, or bind the purchaser who became tenant in common from partitioning his estate. The second article of the agreement was, that the house should "continue in one joint undivided occupation as at present." It appears to me that it was not intended to prevent any one of the parties from selling his interest, or that, if he should sell, the house was to continue in the joint occupation of the remaining members of the family and the purchaser. The words are not merely that the house is to remain in one joint undivided occupation; but that it is to remain in one joint undivided occupation as at present. The decree of the learned Judge is right. I do not think that it is necessary to interfere with the ruling of the learned Judge as to the costs; The real object of the defence was to show that the plaintiff's vendor was not entitled to sell his share, or the plaintiff to have it divided. I am of opinion that the decree ought to be affirmed with costs.

Macpherson, J.

I concur.