

**(1914) 04 CAL CK 0035**

**Calcutta High Court**

**Case No:** None

Surendra Nath Basu and Others

APPELLANT

Vs

Towej Mandal

RESPONDENT

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**Date of Decision:** April 7, 1914

**Citation:** AIR 1915 Cal 53 : 24 Ind. Cas. 86

**Hon'ble Judges:** Beachcroft, J; Asutosh Mookerjee, J

**Bench:** Division Bench

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### **Judgement**

1. We are invited in this Rule to set aside the decree of dismissal in a suit for damages for breach of contract. The case for the plaintiff is that on the 23rd May 1912 they sold a calf to the defendant which was worth Rs. 30 for the sum of Rs. 14 on a two-fold condition, namely, first, that the defendant would not sell the calf to any one, and that if he desired to do so, the plaintiffs would have a right of preemption : secondly, that the defendant would not castrate the calf, and if he did so, the plaintiffs would be entitled to Rs. 50 as damages and also to the expenses of a purificatory ceremony which they might have to perform for the purposes of atonement. The defendant, it has been found, has castrated the animal, and the plaintiff seeks in this suit, which he instituted on the 26th September 1913, to recover Rs. 60 as damages from him for breach of" contract, namely, Rs. 50 as mentioned in the written agreement and Rs. 10 as the expenses of a purificatory ceremony which they have performed. The Small Cause Court Judge has dismissed the suit on the ground that the contract is bad in law. In his opinion it cannot be enforced, because in the case of tangible moveable property delivery of possession is sufficient to transfer ownership from the vendor to the vendee and any condition which is inconsistent with the nature of the transaction can have no operative effect on the purchaser. The Small Cause Court Judge has obviously taken an erroneous view of the rights and obligations of the parties. It is not necessary for our present purpose to consider whether the plaintiffs acquired a valid right of preemption under the contract, but it is plain that they did acquire a right to recover damages in the event which had happened. The contract was for consideration and is not

opposed to public policy. We must hold accordingly that the contract is enforceable.

2. The result is that the Rule is made absolute, the decree of the Court below set aside and the suit decreed for Rs. 60 with interest thereon at the rate of six per cent per annum from the date of the institution of the suit to that of realization. The plaintiffs are also entitled to their costs both in this Court and in the Court below. We assess the hearing-fee in this Court at one gold mohur.