

(1878) 06 CAL CK 0030

Calcutta High Court

Case No: None

Lalla Nowbut Lall

APPELLANT

Vs

Lalla Jewan Lall and
Others

RESPONDENT

Date of Decision: June 3, 1878

Citation: (1879) ILR (Cal) 831

Hon'ble Judges: Richard Garth, C.J; S. Jackson, J; Mitter, J; Markby, J; Ainslie, J

Bench: Full Bench

Judgement

Richard Garth, C.J.

We are of opinion that by the Mahomedan law one co-parcener has no right of pre-emption as against another co-parcener. There appears to be no reason, either upon principle or authority, why the right of shaffa should exist as between co-parceners; and the rule, as laid down in Hamilton's Hedaya, Vol. III, Bk. 38 Ch. 1, appears to have been misunderstood in this respect. That rule merely prescribes that any one partner (or co-parcener) of a property has a right of shaffa as against a stranger, who purchases a share from his co-partner and does not mean that the right exists as between co-partners who may purchase shares from one another. The object of the rule, as explained in that chapter, and in Ch. 3, is to prevent the inconvenience which may result to families and communities from the introduction of a disagreeable stranger as a co-parcener or near neighbour. But it is obvious that no such annoyance can result from a sale by one co-parcener to another. The only result of such a sale would be to give the purchaser a larger share in the joint property than he had before, and perhaps larger than the other co-parceners have. The only authorities in this Court, to which our attention has been called, are entirely in favour of this view.--See Moheshur Lall v. G. Christian 6 W.R. 250 and Teeka Dharee Singh v. Mohur Singh 7 W.R. 260. The case of Roshun Mahomed Mahomet Kuleen 7 W.R.150, decided by Justices Kemp and Markby, appeals, when the facts of it are properly understood, to have no application at all to the question before us. We find from the record of that case, that the true state of facts was this.

One out of three co-parceners had sold his share to a stranger. One of the other co-parceners had exercised the right of shaffa as against the stranger, and obtained the sale of the share to himself; and the only question in the case was, whether the remaining co-parcener had a right to participate in the purchase with the co-parcener who had thus obtained it.

2. We, therefore, decide the question referred to us in the negative, and dismiss the special appeal with costs.