

SECRETARY
OF STATE
v.

RAGHUNATHA
TATTA-
CHARIAR.

SANKARAN
NAIR, J.

opinion on the question whether the inamdar is entitled to any portion of the bed proper or the sandy river-bed. We fix a period of two months for the satisfaction of the decree for costs under section 82, Civil Procedure Code.

APPELLATE CIVIL.

Before Mr. Justice Benson and Mr. Justice Sundara Ayyar.

1912.
December
4 and 12.

KOLATHU AYYAR (SEVENTH DEFENDANT), APPELLANT,

v.

RANGA VADHYAR AND ANOTHER (PLAINTIFF AND SIXTH
DEFENDANT), RESPONDENTS.*

*Pre-emption, contract of— Promisor, heirs of, not enforceable against—
Perpetuities, rule of, applicable to Hindu law also.*

A contract of pre-emption (with reference to lands), which fixes no time within which the agreement to convey is to be performed cannot be enforced against the heirs of the person who entered into the contract as it infringes the rule against perpetuities. The rule of perpetuities is applicable to Hindus also.

Nobin Chandra Soot v. Nabab Ali Sarkar (1900) 5 C.W.N., 343, followed

SECOND APPEAL against the decree of F. D. P. OLDFIELD, the District Judge of Tinnevely, in Appeal No. 430 of 1910, preferred against the decree of N. SUNDARAM AYYAR, the District Munsif of Ambasamudram, in Original Suit No. 16 of 1910.

The facts are given in the judgment.

The seventh defendant filed this Second Appeal.

T. B. Ramachandra Ayyar and *T. R. Krishnaswami Ayyar* for the appellant.

T. Rangachariar for the first respondent.

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SUNDARA AYYAR, J.—The only question of law which it is necessary to decide in this case is whether a contract of pre-emption can be enforced against the heirs of the person who entered into the contract and, if so, whether the rule against perpetuities may be relied on as rendering the contract invalid as against the heirs. The agreement in this case was that the

* Second Appeal No. 1949 of 1911.

covenantor Ammaippen Ammal in the event of selling the property in question "should sell it to Appa Vathiar wagaira on receiving the value stated and if any building should be erected thereon, the cost thereof; but in case they do not desire it she could sell it away to others according to her pleasure." The suit for the enforcement of the agreement was instituted against the heirs of the covenantor. Both the lower courts decided that the agreement was enforceable against the defendants.

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The first question is whether the agreement is enforceable against the heirs of the covenantor. *Nobin Chandra Soot v. Nabab Ali Sarkar*(1) is an authority in favour of the appellant. That judgment is in accordance with *Stocker v. Dean*(2). Sir JOHN ROMILLY, M.R., observed as follows:—"The words are, 'in case Deborah Setchfield should wish to sell' . . . It is manifest they anticipated that something was to be done by Deborah Setchfield, personally, when this contract was to be carried into effect, and this limits the right to the case of her wishing to sell in her lifetime. This is the natural import of the words, and it would be a strained construction of the contract to say that it applied to such a state of things as the present." An unconditional contract to sell would no doubt ordinarily be enforceable against the heirs of the covenantor as if he had said, "I and my heirs shall convey"; but the question is, can an agreement in the words, "I promise to convey to you if I sell the land" be held to bind the heirs as if the promisor said, "I promise that I or my heirs shall convey to you if I or they sell"? In other words, Is an agreement to convey enforceable when the option to sell is exercised by the heirs when the document says, "If I sell"? It seems to us that there is much reason in the view that such a contract is not enforceable against the heirs. But we do not consider it necessary to rest our decision on this ground. We are of opinion that if no time is fixed within which the agreement to convey is to be performed the contract must be held to be invalid as infringing the rule against perpetuities. This is undoubtedly the rule which has been laid down in England. A mere personal contract cannot be questioned on the ground that it is abnoxious to the rule. But a contract which gives the promisee an executory interest in land is as much liable to the

(1) (1900) 5 C.W.N., 343.

(2) (1852) 51 E.R., 739.

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objection as a grant of the land itself, because the promisee obtains by virtue of the contract an equitable right in the land. See *London and South Western Railway Company v. Gomm*(1), which dissented from *Gilberton v. Richards*(2) and *Birmingham Canal Company v. Cartwright*(3). See also *Edwards v. Edwards*(4). The doctrine was applied in this country by the Calcutta High Court in *Nobin Chandra Soot v. Nabab Ali Sarkar*(5). In *Haris Paik v. Jahuruddi Gazi*(6) MACLEAN, C.J., and BANERJEE, J., held that an agreement of pre-emption could be enforced against a purchaser with notice from the promiser. According to the report of the arguments the objection that the agreement infringed the rules against perpetuities was submitted to the Court, but the only point decided by the learned Judges was that the agreement was not unenforceable against a purchaser with notice. In *Ramasami Pattar v. Chinnon Asari*(7), BHASHYAM AYYANGAR, J., expressed the opinion that the rule against perpetuities was applicable to an agreement of pre-emption; but it was not necessary to decide the question and the learned Judge abstained from expressing a final opinion on it as it was not argued at the Bar.

It is contended by the learned vakil for the first respondent that the English rule should not be applied in this country as the Indian law does not recognise equitable estates except in the case of trusts. Although it is true that according to the Indian law there are not two classes of estates, legal and equitable, there is no substantial difference in the law to be applied to the case as the benefit of an equitable estate is in substance given to a person in whose favour a promise to convey lands has been made. The Specific Relief Act lays down that an agreement for the sale of land may be specifically enforced against any person claiming under the vendor's title arising subsequently to the contract except a *bonâ fide* purchaser for value without notice (section 27). The Indian Trusts Act also lays down that a transferee taking with notice of a prior contract in favour of another must hold the right obtained under his transfer as a trustee for the previous promisee (section 91). In effect, therefore, one who has

(1) (1882) 20 Ch. D., 562.

(3) (1879) 11 Ch. D., 421.

(5) (1900) 5 C.W.N., 343.

(2) (1859) 4 H. & N., 277.

(4) (1809) A.C., 275.

(6) (1897) 2 C.W.N., 575.

(7) (1901) I.L.R., 24 Mad., 449 at p. 467.

obtained a promise for the conveyance of land has a substantial interest in it, although according to the decision of this Court, he cannot set it up in defence to a suit by a person who has obtained a subsequent transfer; he is bound to enforce his rights by a suit for specific performance—*Kurri Veerareddi v. Kurri Bapireddi*(1). Section 14 of the Transfer of Property Act, which makes the rule against perpetuities applicable in this country does not apply to merely contractual rights. But there is, in our opinion, no reason why the principle should not be applied to contractual rights entitling a person to the conveyance of land and giving him a substantial interest in it in the sense we have indicated above. There is no reason for supposing that the Hindu law encourages the perpetual tying up of landed property any more than the English law does. Possibly, as pointed out by BHASHYAM AYYANGAR, J., in *Ramasami Pattar v. Chinnan Asari*(2), the Indian law is even stricter than the English law, as it does not, according to the decided cases, recognise transfers in favour of unborn persons as valid.

South Eastern Railway v. Associated Portland Cement Manufacturers (1900), *Limited*(3) was cited on behalf of the first respondent. But that case merely decided that the contract could be enforced against the promisor himself during his lifetime, although no time might have been fixed for the purpose. The same view was held in *Kalimaddin Bhaya v. Reazuddin Ahmed*(4). This does not affect the applicability of the rule when it is sought to enforce the contract against the heirs of the covenantor. If a man promises that he and his heirs will convey, the promise may be enforced, according to these cases against himself, *i.e.*, the promise may be treated as divisible so as to make it enforceable against him, though it may not be enforceable against the heirs. We are of opinion that the view taken in *Nobin Chandra Soot v. Nabab Ali Sirkar*(5) that the rule should be applied, so far as the heirs of the covenantor are concerned, is sound. The same view was taken by MARKBY, J., in *Sreemutty Tripoora Soondaree v. Juggur Nath Dutt*(6). The appeal therefore must succeed. We reverse the decrees of the Courts below and dismiss the suit with costs throughout.

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(1) (1906) I.L.R., 29 Mad., 336 (F.B.).

(3) (1910) 1 Ch., 12.

(5) (1900) 5 C.W.N., 343.

(2) (1901) I.L.R., 24 Mad., 449.

(4) (1909) 10 C.L.J., 626.

(6) (1875) 24 W.R., 321.