

**(1898) 07 CAL CK 0015**  
**In the Calcutta High Court**

Baroda Sundari Ghose

APPELLANT

Vs

Dino Bandhu Khan and Others

RESPONDENT

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**Date of Decision :** 11-07-1898

**Acts Referred:**

**Citation :** (1898) ILR (Cal) 874

**Hon'ble Judges :** Stevens, J; Prinsep, J

**Bench :** Division Bench

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### Judgement

Prinsep and Stevens, JJ.—Chunder Nath Dey Sarkar, defendant No. 1, and Puddo Lochan Dey Sarkar, the deceased husband of defendant No. 2, mortgaged certain properties to Harish Chunder Shaha, who obtained an ex parte decree against them. In execution of that decree Sorosoti Dasi and Rutton Moni Dasi successfully objected to the sale of their shares in these properties, and accordingly their shares were exempted from sale, the sale being held of only the remaining shares. These ladies having died, their shares passed to the mortgagors as reversionary heirs, and on application made by the decree-holder these shares were sold in satisfaction of the balance of the mortgage debt. An attempt to obtain possession through the Court failed, and proceedings u/s 334 of the CPC were instituted, but were afterwards withdrawn by the decree-holder purchaser, who subsequently sold to the plaintiff. The present suit has been brought by this purchaser to obtain possession as against the judgment-debtors and purchasers from them.

2. Of the several points raised at the hearing of this second appeal, the principal one relates to the finding of the District Judge, that the purchase by the plaintiff was a benami purchase for her husband, and next, to its effect.

3. The appellant's pleader contends that there is no evidence in support of the District Judge's finding that it was a benami transaction. We think, however, that facts disclosed by the evidence of the plaintiff's husband, as set out in the judgment of the District Judge, are in themselves sufficient to establish this.

4. It next becomes necessary to consider the right of the plaintiff as benamidar to sue to recover the lands purchased. As an authority against this we are referred to the case of Hari Gobind Adhikari v. Akhoy Kumar Mazumdar (1889) ILR 16 Cal 364 which has been followed in Issur Chundra Dutt v. Gopal Chundra Das (1897) ILR 25 Cal 98 and we understand also in another case which has not been reported. These cases proceed on the practice of this Court in the cases referred to in the case of Hari Gobind Adhikari v. Akhoy Kumar Mazumdar (1889) ILR 16 Cal. 364 and there are no cases in this Court to the contrary. On the other hand, we observe that in Nand Kishore Loll v. Ahmad Ata (1895) ILR 18 All. 69 the learned Judges of the Allahabad High Court have expressed a dissent.

5. We can see no reason to doubt the correctness of the law laid down by this Court on the cases mentioned.

6. In Gopi Nath Chobey v. Bhugwat Pershad (1884) ILR 10 Cal. 697 the learned Judges have no doubt expressed themselves generally in favour of the right of the benamidar to sue, but that was not a suit in ejectment, so we do not feel pressed by it. In this view it is unnecessary to decide the other points raised in this appeal. The appeal is, therefore, dismissed with costs.