

(1909) 12 CAL CK 0051
In the Calcutta High Court

Jitan Prashad and Others

APPELLANT

Vs

Musammat Manbart Kuer and Others

RESPONDENT

Date of Decision : 16-12-1909

Acts Referred:

Citation : (1909) 12 CAL CK 0051

Judgement

1. This is an appeal preferred on behalf of the plaintiffs against a judgment of the District Judge of Shahabad, who dismissed the suit reversing the decision of the Subordinate Judge. The suit was brought by the appellants for a declaration that certain property purchased by the father of the plaintiffs, of which the conveyance was taken in the name of Moti Jan, was really the property of the plaintiffs and that the transaction with Moti Jan was merely a benami transaction conveying no title to the property claimed by her. The facts are that the property in question was purchased by a man named Raghubans. Moti Jan was living under the protection of Raghubans as his mistress and Raghubans having purchased the property caused the conveyance to be made in the name of Moti Jan. Raghubans died some 8 or 10 years ago and the present plaintiffs, who are heirs of Raghubans, say that the transaction was not intended to benefit Moti Jan and that they are entitled to the property in question.

2. The learned Vakil for the appellant contends that on proof that the money was advanced by Raghubans for the purchase of the property, the circumstance that the conveyance was made out to Moti Jan and also the circumstance that the woman was living under Raghubans' protection are, taken by themselves, not sufficient to raise the inference that "Raghubans intended to benefit the woman, Moti Jan, and he placed reliance on two cases, one reported in the Law Reports Chancery Division, Volume I (1902) and the other in Vesey's Reports-Volume X. With the proposition, the learned Vakil has put forward, that the circumstances taken by themselves would not be sufficient to show that the property was really intended to be of Moti Jan's, we quite agree. But the cases cited do not go so far as to show that in the circumstances of the present case the title cannot be inferred to be in the lady. In the case of *In re Policy of the Scottish Equitable Life*

Assurance Society (1902) L.R. 1 Ch. 282, a life policy was taken out by a certain gentleman on his own life for the benefit of a lady who was his wife's sister and with whom after the death of his wife he went through the ceremony of marriage. The lady in question, for whose benefit the policy was taken, died before the person who took out the policy and the gentleman who took out the policy retained it in his own possession and paid the premiums regularly thereon until his death, and it was held on these facts that the legal personal representatives of the lady were trustees of the policy moneys for the legal personal representatives of the gentleman in question. That case is distinguishable from the present case.¹ In that case the person who took out the policy retained it in his own possession--the property with which it was urged he intended to benefit the lady. He not only retained the policy in his own possession but kept it alive by regularly paying the premiums until his death. These circumstances make that case distinguishable from the present in which Raghubans put it out, of his power to deal with the property without the lady's consent. The other case, namely the case of *Rider v. Kidder* 10 Ves. 360, is similar to the present. A. purchaser had purchased stock in his name and then he transferred it in the joint names of himself and of his mistress, and it was held that that circumstance alone did not entitle the mistress to retain the stock after the death of the person with whose money the stock was purchased; It was decided that that circumstance was not sufficient and after the arguments the Court directed enquiries to be made as to the circumstances under which the purchase of the stock was made and the dividends received. That case is an authority for the proposition that it is not sufficient to show that the purchase is made in the name of the person who claims to have been benefited; but something farther has to be shown. The proposition which the learned Vakil for the respondent contends for, on the authority of the cases of *Ram Narain v. Muhammad Hadi* 26 C. 227 : 26 I.A. 38 : 3 C.W.N. 113 and *Ismail Mussajee Mookerdum v. Hafiz Boo* 10 C.W.N. 570 : 3 A.L.J. 353 : 3 C.L.J. 484 : 8 Bom. L.R. 379 : 16 M.L.J. 168 : 1 M.L.T. 137 : 33 C. 773, respectively, is not inconsistent with the English cases. He contends that the intention, with which the purchase was made is a matter of evidence. In the case reported as *Ram Narain v. Muhammad Hadi* 26 C. 227 : 26 I.A. 38 : 3 C.W.N. 113, their Lordships of the Judicial Committee point out that though the source from which the purchase money proceeded is one of the matters which has to be taken into consideration, yet it is by no means conclusive as to the actual ownership of the property and actual possession and receipts of rents of the property are matters which should be considered, and the other case cited is to the same effect. The respondent, while conceding that the circumstance that the property was in the name of the woman and the woman was the mistress of Raghubans is not enough to show that the title passed, supports the judgment of the lower appellate Court by bringing to our notice the fact that there are circumstances which would make it appear that Raghubans desired to benefit this woman. One circumstance is that the property was registered in the name of the woman and the result of that was that the lady was the only person who was legally entitled

to collect the rents from the property. That distinguishes the case from the case reported in the Law Reports, Chancery Division, where the gentleman in question had the property in his own hands. Then it is said that Raghubans possessed a number of other properties none of which was put in the name of the lady and then it is pointed out that the value of the property in the woman's hands was very small, indeed the gross value being only about Rs. 1,000 and that was burdened with a charge of Rs. 750 thus leaving a net value of Rs. 250. Looking at the probabilities of the case one would think that it was likely that this small property was intended for the benefit of the woman.

3. Then there is another circumstances which has impressed us rather strongly, namely, that though Raghubans died some 8 years ago, there is nothing to show that the present plaintiffs ever disputed. Moti Jan's rights to the property, until some. 6 years after Raghubans' death. Then they endeavoured and unsuccessfully endeavoured to get the property registered in their own. name. The circumstance that this went on. for so long leads us to the conclusion that these persons recognised the property as Moti Jan's. It is suggested that rents were collected by Raghubans during his life-time. But it is not suggested that rents were collected in any other capacity than that of an agent for Moti Jan. In the circumstances we think that Moti Jan was treated as the owner of the property in question up to the time when these persons tried to get their names registered in the place of Moti Jan, We are of opinion that the plaintiffs have failed to prove that the transaction was a benami one and the suit, therefore, must stand dismissed the title remaining in the defendants.

4. The appeal is dismissed with costs.

5. The respondents are entitled, to the costs of this appeal.

6. The question as to the plaintiffs', right, to recover the mortgage money, paid by them will remain open between the parties.