
(1910) 04 AHC CK 0015
In the Allahabad High Court

Naipal Sonar

APPELLANT

Vs

Sheo Narain Sonar

RESPONDENT

Date of Decision : 22-04-1910

Acts Referred:

Transfer of Property Act, 1882 — Section 88

Citation : 6 Ind. Cas. 374

Hon'ble Judges : Banerji, J

Bench : Single Bench

Judgement

Banerji, J.—The facts of this case are simple. One Chhagan, goldsmith, obtained a decree for sale u/s 88 of the Transfer of Property Act against Jagannath and others on the 21st February 1901. Upon the death of Chhagan, Bhiki, the father of the plaintiff, Sheo Narain, and Naipal, defendant, as the legal representatives of Chhagan, obtained an order absolute for sale on the 13th of February 1904. The plaintiff was a minor and execution of the decree was taken out by Naipal alone. He caused the property of the judgment-debtors to be sold by auction and himself purchased it in lieu of the amount of the decree, and the usual sale certificate was issued to him. The plaintiff alleges that this purchase was made with money belonging to the parties jointly, that it was in reality a purchase on behalf of both the decree-holders and that the plaintiff is entitled to a moiety of the property purchased. He accordingly brought the suit, out of which, this appeal has arisen, for possession of a half share of the property sold by auction and purchased in the name of the defendant. The only question in the case is whether the suit is barred by the provisions of Section 317 of Act XIV of 1882. It is contended on behalf of the defendant-appellant that the suit being one against a certified purchaser, it comes within the purview of that section. This contention has been repelled by both the Courts below and I think rightly. This case is very similar to that of *Acchaibar Dube v. Tapasi Dube* and as held in that case, Section 317 does not preclude the plaintiff from claiming a share in the property. The object of Section 317, as pointed out by their Lordships of the Privy Council, is to put an end to benami purchases and check the practice of what are known as

benami purchases, that is, transactions in which one person purchases secretly on his own account in the name of another. The present case is clearly not one of a benami purchase. It is the case of a purchase by one of two decree-holders cr. behalf of both of them in lieu of the amount of the decree which belonged to both. Such a purchase cannot be deemed to be a benami purchase against which Section 317 was directed. For the reasons given in the judgment of my brother Richards in the case to which I have referred, I am of opinion that the Courts below were right in holding that Section 317 was no bar to the maintenance of the present suit. This is the only point argued in the appeal. I dismiss the appeal with costs including fees on the higher scale.