

(1949) 10 BOM CK 0003

In the Bombay High Court

Case No : Second Appeal No's. 1136 and 1137 of 1946

Ranchhoddas Bhikardas Bhate

APPELLANT

Vs

Manga Bhika Bhole and Others

RESPONDENT

Date of Decision : 10-10-1949

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 66

Citation : AIR 1950 Bom 277 : (1950) 52 BOMLR 286

Hon'ble Judges : Chagla, C.J

Bench : Single Bench

Advocate : V.S. Desai, for the Appellant; A.G. Kotwal, for M.R. Kharkar and A.G. Kotwal for R.B. Kotwal, for Respondents 2 and 4, for the Respondent

Final Decision : Dismissed

Judgement

Chagla C. J.

1. Both these appeals raise an interesting question as to the applicability of Section 66, Civil P. C. Section 66 was enacted in order to prohibit a suit against the certified purchaser by a real owner on the ground that the purchase was made on behalf of the real owner or on behalf of someone through whom the plaintiff claims, and this rule was enacted for reasons of public policy. It will be noticed that this section runs counter to the well-known equitable principle that the Court would give effect to the real and not to the nominal title. It is perfectly true that inasmuch as this section contravenes a well-established principle of equity, it must be strictly construed.

2. The facts which give rise to these appeals are very brief. The plaintiff sued for possession alleging that he had been dispossessed some time before he filed the suit, and the suit was resisted by one of the defendants on the ground that he was a purchaser at a court-sale and a sale certificate had been issued in his name. Therefore it is quite clear that in order to succeed in his suit the plaintiff had to displace the title which the Court had conferred upon defendant 4. He

could only get possession provided he proved that defendant 4 had purchased the property not as the real owner but as his benamidar. I should have thought that a suit of this character would come clearly within the mischief of Section 66.

3. Mr. Desai has drawn my attention to various decisions which have construed Section 66 and which have tried and confined its operation within the strict bounds of the language of the Legislature. These decisions go to show that Section 66 is more a weapon of defence than a weapon of offence. It is a section which a court purchaser can avail himself of in defence against a suit for possession by the real owner. He cannot avail himself of this section in order to file a suit against the real owner who is in possession. He may even file a suit for a declaration that he is not the real owner but that someone else is. The Calcutta High Court has gone as far as holding that if a real owner is in possession, he can file a suit for a declaration that the defendant's title was merely benami and the real title was in the plaintiff. See *Sasti Churn Nundi v. Aunopurna* 23 Cal. 699: But the Allahabad High Court has dissented from that view taken by the Calcutta High Court. See *Bishan Dial v. Ghazi-ud-din* 23 ALL. 175 : 1901 A. W. N. 44. The Patna High Court has taken the same view as Allahabad. See *Keshri Mull and Another Vs. Sukan Ram*, . Mr. Desai has drawn my attention to a decision of the Privy Council in *Muhammad Abdul Jalil Khan v. Muhammad Obaid Ullah Khan* 31 Bom. L. R. 1393 : A. I. R 1929 P. C. 228. In that case the Privy Council points out that the effect of Section 66 was not to make benami transactions illegal, and what they decided in that case was that if the real owner has perfected his title by adverse possession, he could sue the nominal owner on that title although the nominal owner had in his favour a Court certificate. The Privy Council is at pains to point out that the plaintiff's suit was based not on his title as the real owner as against the nominal owner, but the suit was based on the fact that he was in adverse possession for more than 12 years and his title arose from that adverse possession. The other question that might arise was expressly left undecided by the Privy Council, and that was a case where a plaintiff might sue the nominal owner when his possession was for less than 12 years and had not ripened into a title. Mr. Desai strongly relies on the observations in the judgment of the Privy Council appearing at p. 1401, and these observations are:

"Now it is clear under these rulings that, (and the Privy Council referred to earlier rulings of their own) while the section protects the certified purchaser, so long as he retains the possession given him by the Court, from a suit by the true owner, if he allows the real purchaser "being the true owner" to get possession, the section does not enable him to sue for possession, because possession has come into the hands of the true owner, who is entitled to it,"

What Mr. Desai says is that in this case the true Owner was in possession. He was dispossessed and he is suing because he was dispossessed, and therefore, the possession of the nominal owner should not be protected. Mr. Desai reads this passage to mean that it is only the possession of the certified purchaser which has to be protected and not his title, and if the certified purchaser allows

his possession to be interfered with and the real owner to get possession, then Section 66 cannot come to the rescue of the certified purchaser. It must be noticed that in this case the Privy Council expressly states that this section will not help the certified purchaser if he sues for possession. Therefore the Privy Council was contemplating a case where a certified purchaser having lost possession sues for possession against the real owner.

4. But the case we have before us is not a case of that character at all. This is not a case where a certified purchaser is suing the real owner for possession; the case is the other way about; it is the real owner who is suing for possession against the certified purchaser and, in my opinion, the mere fact that the real owner was in possession for some time has no relevancy to the decision of this question, At the date of the suit the certified purchaser was in possession, That possession was pursuant to his title and that title was based upon the sale certificate issued by the Court. The plaintiff in, order to succeed had to destroy the validity of that certificate and the validity of that certificate could only be destroyed by the plaintiff" establishing that the defendant was a benamhdar and he was the real owner. In my opinion, that is exactly what Section 66 precludes the plaintiff from establishing. In my opinion, therefore, both the Courts below were right in taking the view that the plaintiff's suit was barred u/s 66.

5. The result is that both the appeals fail and they are dismissed with costs.