
(1893) 10 MAD CK 0004
In the Madras High Court

Sankunni Nayar and Raman Nambiar	APPELLANT
Vs	
Narayanan Nambudri and Another	RESPONDENT

Date of Decision : 11-10-1893

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 30

Citation : (1894) ILR (Mad) 282

Hon'ble Judges : Muttusami Ayyar, J; Best, J

Bench : Division Bench

Judgement

Best, J.—These two appeals are against the same decree, the appellant in No. 779 being the second defendant, and appellant in No. 943

the first defendant.

2. The suit was brought by plaintiff for possession of two items of land alleged to be the jenm property of plaintiff's house and demised by

plaintiff's ancestor on kanom for Rs. 412-9-2 to a former karnavan of defendants 2 to 15 in Kollam 1040 (1864-65). Plaintiff's case is that on the

land being sold (in 1874) in execution of decree in Original Suit No. 232 of 1868, obtained against plaintiff's father, it was purchased by first

defendant's late karnavan Raman Nambiar benami for plaintiff's mana (house), the said Raman Nambiar having been appointed by plaintiff's

mother manager of plaintiff's mana, plaintiff being an infant aged two years in 1048 (1872-73) when his father died; that Raman Nambiar

continued as such manager till 1054 (1878-79), when first defendant was appointed as his successor and is still the kariastan; that in 1064 (1888-

89) when the kanom was renewed to second defendant at the advice of the first defendant, the plaint items were fraudulently excluded. Hence this

suit.

3. The first defendant denied that either his karnavan or himself ever managed on behalf of plaintiff's mana, and pleaded that the purchase in 1874

was made by his karnavan with his own money and on account of his own tarwad, and not benami for plaintiff; that the suit was opposed to

Sections 30 and 317 of the Code of Civil Procedure, and also bad for misjoinder of causes of action; further, that it was time-barred, and that

plaintiff attained his majority more than three years before the institution of the suit.

4. Defendants 2 to 5 supported first defendant, and the other defendants allowed the suit to proceed ex parte as far as they were concerned.

5. The two lower Courts have concurred in finding that at the date of the purchase of the plaint property, first defendant's karnavan was managing

on behalf of plaintiff's mana; that he did in fact purchase the property for the plaintiff's illom, though the money paid was first defendant's

karnavan's own; that there was no adverse possession till January 1889 when plaintiff granted the renewal kanom and first defendant executed the

kanom deed XXIII shortly after for the plaint lands; also, that the suit is brought within three years of plaintiff's attainment of majority, and that the

cause of action did not arise till January 1889. It has further been found that the suit is not bad either for misjoinder of causes of action or u/s 30 of

the Code of Civil Procedure.

6. The principal contention before this Court is that the suit is bad as being opposed to Section 317 of the Code of Civil Procedure, which

declares that "no suit shall be maintained against the certified purchaser (at a Court sale) on the ground that the purchase was made on behalf of

any other person, or on behalf of some one through whom such other person claims.

7. The District Munsif held the above section to be no bar to the suit, because "the auction was held and the sale certificate granted before the new

Act (X of 1877) came into force and the provisions of Section 317 apply to a certified purchaser under the Act." But, as well observed by

Mahmood, J., in *Aldwell v. Ilahi Bakhsh* ILR 5 All. 478 Section 317 of the present CPC has not altered in principle the rule of law contained in

Section 2601 of the old Code (VIII of 1859). The Subordinate Judge's reason for

holding this suit not to fall within the prohibition contained in Section 317 is because it was held in *Sohun Lall v. Lala Gya Pershad* 6 N.W.P. 265 that Section 260 of Act VIII of 1859 did not preclude a suit by a decree-holder against the certified purchaser for the purpose of establishing his right to bring the property to sale in execution of the property of the judgment-debtor, and "if so," says the Subordinate Judge, "I do not see why the judgment-debtor himself cannot bring a suit for a declaration that the property was purchased by his agent benami for himself." I imagine, however, that it is this latter case that the Legislature had expressly in view in enacting Section 317, As observed by the Chief Justice and Handley, J., in *Rama Kurup v. Sridevi* ILR 16 Mad. 290 the object of the section is to put a stop to benami purchases at execution sales, and this object can only be carried out by enforcing it in all cases without regard to consequences." As further observed in the same judgment. "It is not a sufficient reason for declining to carry out the express terms of the section; that to do so would be to allow a fraud to be perpetrated. The person in whose name a purchase has been made for the benefit and with the money of another, of course, commits a fraud in claiming the property as his own. Nevertheless, the law says that a suit shall not be maintained against him on the ground that the purchase was benami and thus provides that his fraud shall prevail." As was also remarked in *Ramakrishnappa v. Adinarayana* ILR 8 Mad. 511 "the effect of Section 317 can only be taken to be to enable certified purchasers and those claiming under them to avoid any arrangement made with them in regard to the purchase in the nature of a trust.

8. The present, however, is not a case of benamidar pure and-simple. It is found that Raman Nambiar was, at the time of the purchase, manager on behalf of plaintiff, who was an infant, and that other would-be purchasers of the property abstained from bidding, because they were given to understand that the purchase by Raman Nambiar was bung made by him as such manager and on behalf of the minor. Consequently, property worth Rs. 2,000 was allowed to be knocked down for Rs. 230. Moreover, Raman Nambiar never set up any claim to the property as his own.

Such being the case, I do not think the first defendant can be allowed to succeed in his attempt to secure the property for himself under colour of

Section 317 of the Civil Procedure Code.

9. But first defendant is entitled to interest on the Rs. 230 decreed to him from 25th July 1874, the date of sale. The lower Courts' decrees will,

therefore, be modified by directing plaintiff to pay to first defendant interest at 6 per cent, per annum from 25th July 1874 to date of payment on

the Rs. 230 decreed to first defendant. Plaintiff and first defendant will pay each other costs of the appeal proportionate to the amount allowed

and disallowed.

Muttusami Ayyar, J.

10. I come to the same conclusion. The question for determination in these second appeals is whether upon the facts found the decision of the

Courts below is correct. The substantial parties to this suit are the son of the execution-debtor in Original Suit No. 232 of 1868 and the

representative of the certified purchaser at the Court sale held in execution of the decree passed therein. It is provided by Section 317 of the CPC

that no suit shall be maintained against the certified purchaser on the ground that the purchase was made on behalf of any other person, or of some

one through whom such other person claims. Although Act VIII of 1859 was in force when the sale took place in the present case, Section 317

has not, as observed in *Aldwell v. Ilahi Bakhsh* ILR 5 All. 478 altered in principle the rule of law contained in Section 260 of Act VIII of 1859.

That rule is, not that a benami purchase is void altogether, but that it shall not be available as a ground of action against a certified purchaser. The

Privy Council held in *Lokhee Narain Roy Chowdhry w. Kalypuddo Bandopadhyaya and Shamapuddo Bandopadhyaya* L.R. 2 IndAp 154 that when

the certified purchaser is the plaintiff, the real owner, if in possession, and if he honestly obtained that possession, may rely on the benami purchase

as a ground of defence. It was also pointed out by this Court in *Ramakrishnappa v. Adinarayana* ILR 8 Mad. 511 that a benami purchase is not

invalid even as a ground of claim as against defendants who are neither certified purchasers nor claim under them. Another limitation of the rule is

that indicated by the second paragraph of Section 317, viz., that the protection vouchsafed to a certified purchaser does not extend to cases of

fraud. The suit from which these second appeals arise was brought against the anandran of the certified purchaser, and the ground on which the

Courts below rest their decision is that the plaintiff is the beneficial owner, and that the certified purchaser under whom the first defendant claims is

benami purchaser or his trustee. This ground of decision is inconsistent with the effect of Section 317 which is described in Ramakrishnappa v.

Adinarayana ILR 8 Mad. 511 as enabling the person claiming under the certified purchaser to avoid any arrangement made regarding the benami

purchase. If the facts found disclosed a benami purchase and nothing more, the appeals must prevail. But it is also found that Raman Nambiar was,

at the time of the Court sale, managing the affairs of respondent's illom as its agent, and that he bought the land as such, though he advanced the

purchase money on the understanding that he was to be repaid. It is also found, as a fact, that the market value of the land in dispute was Rs.

2,000, whilst it was bought at the Court sale for Rs. 230. The District Munsif observes that there is strong evidence to show that numerous

persons who went to bid at the Court sale were dissuaded from doing so by Raman Nambiar, who represented to them that he was buying the

land for the use of respondent's illom. It is also found that Raman Nambiar continued to be the agent of the illom till his death, and that after him,

the first defendant was agent until the date of the controversy which resulted in this litigation. Until 1889, the kanom originally granted by the illom

was outstanding, and it does not appear that Raman Nambiar ever asserted his title to the land in dispute, or that the first defendant asserted the

right of his tarwad to it prior to 1889. Under these circumstances, I consider that the decision of the Courts below can be supported on the ground

that Raman Nambiar bought the land as agent of plaintiff's illom subject to a charge in his favour for the amount advanced by him, and that until

1889 the land was treated as the property of the illom; otherwise an agent would be enabled to make a profit out of his principal's property, which

he intended to deal with as agent, and continued to do so till 1889, and thereby to turn the understanding on which his name was inserted in the

certificate and the land was since held into a means of perpetrating fraud on his principal. I also think that interest should be awarded on Rs. 230 in

the decree proposed.

11. I concur with my learned colleague on the other questions raised on second appeal and in the decree proposed by him.

1.

Section 260: The certificate shall state the name of the person who at the time of sale

is declared to be the actual purchaser, and any suit brought

Certificate to state the against the certified purchaser on the ground that the purchase

name of actual purchaser. was made on behalf of another person not the certified purchaser,

though by agreement the name of the certified purchaser was used,

shall be dismissed with costs.