

## APPELLATE CIVIL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and  
Mr. Justice Handley.

RAMA KURUP (PLAINTIFF), APPELLANT,

v.

SRIDEVI AND OTHERS (DEFENDANTS NOS. 3, 1 AND 2), RESPONDENTS.\*

*Civil Procedure Code—Act XII of 1882, s. 317—Fraud—Benamiee purchaser at execution sale for judgment-debtor—Remedy of subsequent purchaser for val. e.*

In a suit to redeem a kanom brought by the plaintiff who had purchased the land in execution of a decree against the jenmi, it appeared that the land had previously been purchased in the name of one who was joined as a supplementary defendant with the funds of the jenmi's tarwad, and with the object of defrauding the creditors of that tarwad. A decree for redemption was passed, which was reversed on appeals filed by the supplementary defendant and the kanomdar respectively. The plaintiff preferred a second appeal against the decree in the first mentioned appeal, joining the kanomdar as respondent. But it was *held* that the plaintiffs could not succeed, as the kanomdar was not a party to the appeal against which the second appeal was preferred:

*Semle*, apart from the above objection, the plaintiff was not entitled to a declaration that the purchase by a supplementary defendant was benamiee for the tarwad of the original jenmi and consequently invalid as against plaintiff. *Karizak Subina v. Monohur Das*, I.L.R., 12 Cal., 204, dissented from.

SECOND APPEAL against the decree of J. P. Fiddian, District Judge of North Malabar, in appeal suit No. 89 of 1890, reversing the decree of V. Kelu Eradi, District Munsif of Paynad, in original suit No. 61 of 1889.

Suit to redeem a kanom. Defendants Nos. 1 and 2 were the kanomdar and his tenant. The plaintiff had purchased the land in execution of a decree against the jenmi in 1883. Defendant No. 3 had previously purchased it, and it appeared that the purchase had been effected with funds supplied by the jenmi's tarwad in order to defraud its creditors. This defendant was brought on to the record after suit filed on the plaintiff's application.

The District Munsif passed a decree for redemption against which defendants Nos. 1 and 3 preferred separate appeals, and the District Judge in each appeal reversed the decree.

\* Second Appeal No. 479 of 1891.

The plaintiff now preferred this second appeal joining all three defendants as respondents against the decree passed by the District Judge on the appeal of defendant No. 3 in which defendants Nos. 1 and 2 were not brought on the record.

RAMA KURUP  
SRIDEVI.

*Bhashyam Ayyangar* and *Sankara Menon* for appellant.  
*Sankaran Nayar* for respondent No. 1.

JUDGMENT.—It is the case for all parties that the land sued for originally was the jenm of Thekkadath Nair. Plaintiff's case is that it was demised to first defendant's tarwad in 1038 (1862-63) on a kanom of Rs. 65, that the jenm right was sold in 1883 in execution of a decree against the Thekkadath Nair and purchased by Raman Nambiar from whom it was purchased by plaintiff. Hence plaintiff sues to redeem the kanom and recover the land from first defendant and his tenant, second defendant.

The first defendant denies that he holds under the kanom sued on, and alleges that prior to the purchase by Raman Nambiar the jenm right of the Thekkadath Nair had been sold in execution of a certain decree against the jenm and purchased by Sridevi Ammal, a female member of the tarwad of the Thekkadath Nair, reserving a kanom right of Rs. 325 in favour of defendant No. 1, which was subsequently renewed for Rs. 525. Sridevi Ammal was made defendant No. 3 and supported defendant No. 1.

The Munsif found that the purchase by defendant No. 3 was made in his name with funds supplied by her tarwad in order to defraud the creditors of the tarwad. Plaintiff agreed to redeem the kanom of Rs. 325 set up by defendant No. 1, and the Munsif accordingly decreed for surrender of the plaint lands by defendants to plaintiff on his paying defendant No. 1 the kanom amount Rs. 325 and ordered that first and third defendants should pay plaintiff's costs. Defendant No. 3 appealed to the District Court in appeal No. 89 of 1890 and defendant No. 1 in appeal No. 117 of 1890. Defendant No. 2 did not appeal.

The District Judge in appeal No. 89 of 1890 concurred in the finding of the Munsif as to the nature of the purchase by defendant No. 3, but held that the suit was barred by section 317 of the Civil Procedure Code and accordingly passed a decree in that appeal, reversing the decree of the Munsif and dismissing the suit, but without costs. In appeal No. 117, the District Judge for the same reasons as in appeal No. 89 reversed the original decree

RAMA KURUP and dismissed the suit without costs. Both appellate decrees were  
 SRIDEVY. passed on the same day.

In second appeal No. 479 of 1891 plaintiff appeals against the decree in appeal No. 89 making all three defendants respondents. First and second defendants' names must be struck off the record as respondents, as they were no parties to the appeal out of which this second appeal arises. Plaintiff has not appealed against the decree in appeal No. 117. The suit, therefore, stands dismissed without appeal against defendant No. 1, and plaintiff cannot obtain the only relief he sought, viz., a decree for redemption on payment of the *kanom* amount to first defendant. This seems sufficient to dispose of this second appeal; for even if we were of opinion that the District Judge was wrong in his view of the effect of section 317 of the Civil Procedure Code, we could not give plaintiff the decree he asked for. But it is urged that defendant No. 3 having been made a party at the instance of plaintiff, and plaintiff having asserted against her that her purchase was made benamee for the tarwad and therefore could not defeat plaintiff's title, plaintiff was at least entitled as against her to a declaration to that effect. We doubt whether such a declaration could be made in this suit; but assuming for the sake of argument that it could, we think section 317 would clearly be a bar to plaintiff's obtaining it. Treated as a suit against defendant No. 3 for a declaration that her purchase was made benamee for her tarwad, the case comes exactly within the very words of the section. It is a suit against the certified purchaser on the ground that the purchase was made on behalf of another person and the section says that such a suit shall not be maintained. We cannot agree with the decision in *Kanizak Sukina v. Monohur Das*(1) which seems to us to contravene the clear meaning of the section. It is not in our opinion a sufficient reason for not carrying 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 of 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 benamee and thus provides that his fraud shall prevail. The object of the section, we

(1) I.L.R., 12 Cal., 204.

consider, was to put a stop to benamie purchases at execution-sales, and this object can only be carried out by enforcing it in all cases without regard to consequences. In any view therefore we think the second appeal must fail and we dismiss it with costs.

There is nothing in the memorandum of objections and we dismiss it with costs.

RAMA KURUP  
v.  
SRIDEVI.

## APPELLATE CIVIL.

Before Mr. Justice *Muttusami Ayyar* and Mr. Justice  
*Wilkinson.*

SRIMANA VIKRAMAN AND ANOTHER (PLAINTIFFS  
Nos. 1 AND 2), APPELLANTS,

1892.  
September 19.

v.

RAYAN AND OTHERS (DEFENDANTS NOS. 1 TO 3 AND 5 TO 8),  
RESPONDENTS.\*

*Civil Procedure Code—Act XIV of 1882, s. 544—Appeal by two persons—  
Withdrawal of one appellant from appeal—Reversal of decree on appeal.*

A decree was passed for the plaintiff in a suit to redeem a kanom brought against various persons most of whom disclaimed all interest. An appeal was preferred by one of the defendants who claimed to be the jenmi of the premises comprised in the kanom and another who held a kanom from him. The first mentioned appellant withdrew from the appeal which, however, was prosecuted by the other and the appellate court reversed the decree :

*Held*, that since the appellants were the only substantial defendants the appellate court was right in allowing the appeal to proceed.

SECOND APPEAL against the decree of E. K. Krishnan, Subordinate Judge of South Malabar, in appeal suit No. 756 of 1890, reversing the decree of A. Annaswami Ayyar, District Munsif of Ernad, in original suit No. 419 of 1889.

The facts of this case appear sufficiently for the purposes of this report from the following judgment of the High Court.

The plaintiffs preferred the second appeal.

*Sankaran Nayar* for appellants.

*Ryru Nambiar* for respondent No. 8.

JUDGMENT.—The only point urged is that the Subordinate Judge was in error in reversing the whole decree when only two

\* Second Appeal No. 1567 of 1891.