

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice
Shephard.

TIRUMALAYAPPA PILLAI AND OTHERS (PLAINTIFFS NOS.
1 AND 3 TO 5), APPELLANTS,

1894.
August 22.
November 13.

2.

SWAMI NAIKAR (DEFENDANT), RESPONDENT.*

*Revenue Recovery Act (Madras)—Act II of 1864, s. 38—Revenue Recovery Amend-
ment Act (Madras)—Act III of 1884, s. 1 (5)—Revenue sale—Benami purchaser—
Suit by benamidar to eject tenants.*

Land forming part of the endowment of a chattram was brought to sale for arrears of revenue and was purchased by the plaintiffs who now sued to eject the tenants who were in occupation of the land :

Held, (1) that the defendants were entitled to plead that the plaintiffs had purchased *benami* from the managers of the chattram :

(2) that the above plea having been substantiated, the plaintiffs were not entitled to maintain the suit.

SECOND APPEAL against the decree of S. Gopalachariar, Subordinate Judge of Tinnevely, in appeal suit No. 512 of 1891, affirming the decree of V. Swaminadha Ayyar, Additional District Munsif of Tinnevely, in original suit No. 272 of 1890.

The plaintiffs sued to eject the defendants from certain land in their occupation. The land in question was, up to the date of the revenue sale hereinafter mentioned, part of the endowments of a chattram having been constituted such by the ancestor of a family referred to as the Dalavoy Mudaliars, and the patta for the land stood in the name of the hakdars or managers of the chattram, who were the descendants of the founder. The defendants were in occupation as tenants of the hakdars. The revenue due on the land having fallen into arrears, the land was brought to sale under the Revenue Recovery Act on 22nd June 1879 and purchased by Appasami Mudaliar who sold it on 4th September 1888 to Kuthalinga Mudaliar, and the plaintiffs claimed title from the latter under a sale-deed, dated 19th February 1890.

The defendants pleaded that they had a right of permanent occupancy and also that the purchase by Appasami Mudaliar was *benami* for the hakdars who had fraudulently permitted the kist to fall into arrears and purchased the land in the name of one of

* Second Appeals Nos. 1008 to 1027 of 1893.

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their dependants, and further that the subsequent conveyances under which the plaintiffs claimed title were also fraudulent.

The District Munsif found that the purchase at the revenue sale was *benami* as pleaded, and with regard to the subsequent sale-deeds he said:—"I entertain no doubt that they were passed "only nominally." On these findings he ruled on the authority of *Prosunno Coomar Roy Chowdhry v. Gooroo Churn Sein*(1) and *Hari Gobind Adhikari v. Akhoy Kumar Mozumdar*(2) that the plaintiffs were not entitled to maintain the suit. He also held that the defendants had a right of permanent occupancy and he passed a decree dismissing the suit.

On appeal the Subordinate Judge expressed his concurrence in the finding that the purchase at the revenue sale was *benami* and held that the alleged subsequent vendees had paid no consideration for their respective conveyances. He ruled that the plaintiffs were precluded by these circumstances from maintaining the suit, as to which question he cited *Gopeekrist Gosain v. Gungapersaud Gosain*(3), *Dharani Kant Lahiri Chowdhry v. Kristo Kumari Chowdhry*(4) and *Chinnan v. Ramachandra*(5).

The plaintiffs preferred this second appeal.

Parthasaradhi Ayyangar for appellants.

Rangachariar for respondents.

MUTTUSAMI AYYAR, J.—In these connected appeals, appellants are the ostensible purchasers at revenue sales or their nominal vendees, and respondents are tenants in possession of the lands put up to sale. The lands in question are Karisal punja in the village of Theevasilapuram, which is one of the ten villages forming the endowment of a chattram founded at Seenalparai by an ancestor of the Dalavoy Mudaliars. They are separately assessed and registered in the Collector's accounts in the names of the managers or hakdars of the chattram, who are descendants of its founder. The plaintiffs' case was that, as purchasers at revenue sales or as persons claiming under them, they were entitled to eject the tenants in possession. On the other hand, the tenants contended, *inter alia*, that the plaintiffs purchased *benami* for the hakdars; that as mere *benamidars*, they were not entitled to maintain the suits in their own names; that the tenants had a right of

(1) 3 W.R., 159.

(2) I.L.R., 16 Cal., 364.

(3) G.M.L.A., 53, 72.

(4) I.L.R., 13 Cal., 181; s.c., L.R., 13 I.A., 70.

(5) I.L.R., 15 Mad., 54.

permanent occupancy and that the revenue sales were the result of a fraudulent conspiracy between the hakdars and the purchasers designed to procure the eviction of the tenants. The District Munsif upheld the tenants' contention and dismissed the suits with costs. On appeal, the Subordinate Judge confirmed his decision, but rested it on the sole ground that the plaintiffs were mere *benamidars* and that, as such, they could not maintain the suits. To this decision five objections are taken. The first of them is, that there is no evidence on record to show that the purchases were made *benami*. I attach no weight to it, as there is ample evidence on the point and as the Subordinate Judge discusses it at some length in his judgment. Another objection is that the onus of proof was erroneously thrown on the plaintiffs. This is also not tenable as the Subordinate Judge distinctly states in paragraph 8 of his judgment that the onus of proof is on the defendants.

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The next objection is that, assuming that the purchases were made *benami*, still it is competent to plaintiffs to sue in their own names, but, as observed by the Subordinate Judge, a *benamidar* could not maintain the suit, there being no intention that the property—the subject-matter of the suit—should vest in him. It must also be noted that these suits were instituted on their own account. Nor is there any foundation for the contention that exhibit XXIV has been misconstrued. The substantial question is, whether respondents are entitled to plead that the purchase, at a revenue sale, is made *benami*. It is provided by Act III of 1884 that a certificate issued to the purchaser under the Revenue Recovery Act shall be conclusive evidence of the fact of the purchase in all courts and tribunals. But a greater effect cannot be given to this provision than is given to a similar provision in the case of *benami* purchases at execution sales. With reference to them it has been held that though the true owner cannot maintain a suit against a certified purchaser under sections 316 and 317 of the Code of Civil Procedure, yet third parties are not thereby precluded from urging their claims against the true owner in respect of the property purchased as *benami*. The Subordinate Judge is therefore right in holding that the *benamidars* and their nominal vendees are not entitled to maintain these suits which are in the nature of ejectments on their own account,

These second appeals fail and I would dismiss them with costs.
SHEPARD, J.—I concur.