

APPELLATE CIVIL.

Before Mr. Justice Davies and Mr. Justice Boddam.

THEYYAVELAN (PLAINTIFF), APPELLANT,

v.

KOCHIAN AND ANOTHER (DEFENDANTS NOS. 1 AND 2),
RESPONDENTS.*

1897.
September
23.

Civil Procedure Code—Act XIV of 1882, s. 317—Certified purchaser—Assignment from a certified purchaser.

A person taking an assignment from a certified purchaser at a Court sale is not entitled under Civil Procedure Code, section 317, to object to the maintainability of a suit to recover the land purchased, on the ground that the purchase was made benami.

SECOND APPEAL against the decree of J. H. Munro, Subordinate Judge of Calicut, in Appeal Suit No. 358 of 1895, modifying the decree of V. Ramasastry, District Munsif of Temelprom, in Original Suit No. 424 of 1893.

The plaintiff was the undivided brother of defendant No. 1, and he brought this suit for partition of their property including, among the properties to be divided, certain lands which were in question in this second appeal. The case of defendant No. 1 was that they were his self-acquisitions, he having obtained them by assignment from one Pangi who had purchased them at a Court sale held in execution of a decree against the plaintiff's family. The plaintiff alleged that the purchase by Pangi was made benami for the family with family funds, and that they were bought back by defendant No. 1 on account of the family.

The District Munsif decided in favour of the case set up by the plaintiff, but the Subordinate Judge on appeal expressed the view that the rights of defendant No. 1 were identical with those of his assignor, and that as his assignor was the certified purchaser, Civil Procedure Code, section 317, prevented the title from being impugned on the ground that the purchase was benami. He modified the decree of the District Munsif accordingly.

The plaintiff preferred this second appeal.

Ryru Nambiar for appellant.

Subramania Ayyar for respondents.

THEYYA-
VELAN
v.
KOCHAN.

JUDGMENT.—Section 317 of the Code of Civil Procedure debars a suit against a 'certified purchaser' by a person claiming to be the real purchaser or deriving title from the real purchaser.

The contending parties here do not occupy the positions contemplated in the section, as the first defendant is not the certified purchaser, but an assignee of the certified purchaser. The assignment by the certified purchaser to the first defendant does not clothe him with the certified purchaser's right to object to the maintainability of a suit as if it had been brought against himself. The protection given to the certified purchaser cannot be transferred by him. The first defendant did not therefore stand in the certified purchaser's shoes as the Subordinate Judge has held. We must accordingly reverse his decree and remand the appeal for disposal upon the merits.

Costs will abide the result.

APPELLATE CIVIL.

Before Mr. Justice Benson and Mr. Justice Boddam.

1897.
October 21.

KRISHNAN NAMBIAR AND OTHERS (DEFENDANTS NOS. 2, 7),
AND 9 TO 12), APPELLANTS,

v.

KANNAN AND ANOTHER (PLAINTIFF AND DEFENDANT NO. 8),
RESPONDENTS.*

Limitation Act—Act XV of 1877, sched. II, arts. 115, 116—Covenant implied in registered sale-deed—Transfer of Property Act—Act IV of 1882, s. 55—Implied covenant for title—Damages for breach—Civil Procedure Code, s. 13—'Res judicata.'

On 8th February 1889 the defendant sold to the plaintiff, under a registered conveyance containing no express covenant for title, land of which he was not in possession, and the purchase money was paid. The plaintiff and the defendant sued to recover possession, but failed on the ground that the vendor had no title. The plaintiff now sued on 7th February 1895 to recover with interest the purchase money and the amount of costs incurred by him in the previous litigation :

Held, that the suit was not barred by limitation, that the defendant was not entitled to give evidence of his alleged title, and that the plaintiff was entitled to the relief sought by him.

SECOND APPEAL against the decree of B. Macleod, Acting District Judge of North Malabar, in Appeal Suit No. 344 of 1895,

* Second Appeal No. 1138 of 1896.