APPELLATE CIVIL.

Before Mr. Justice Sundara Ayyar and Mr. Justice Sadasiva Ayyar.

1912. July 22 and 26.

KANDASAMI PILLAI (FIRST DEFENDANT), APPELLANT,

v.

NAGALINGA PILLAI AND FIVE OTHERS (PLAINTIFFS NOS. 1 AND 3, SECOND DEFENDANT, AND THE LEGAL REPRESENTATIVES OF THE FIRST RESPONDENT), RESPONDENTS.*

Estoppel—Evidence Act (I of 1872), sec. 115—Sale to plaintiff by B of land as his—Attestation by A with knowledge of the contents, when he was the owner, effect of—Civil Procedure Code (Act XIV of 1882), sec. 317—'Fraudulently.'

If *A*, with the knowledge that the recital in a sale-deed that the land, thereby conveyed, belongs to *B* and is in his (*B*'s) enjoyment as owner, attests the sale-deed executed by *B* in favour of the plaintiff he is estopped from setting up thereafter his title to the land, even though he (*A*) might be the certified purchaser of the same in court auction.

Sarat Chunder Dey v. *Gopal Chunder Laha* [(1892) L.R., 19 I.A., 203 at pp. 215 and 216], followed.

Cairncross v. *Lorimer*, [3 Macq., 829] and *Carr* v. *London and North Western Railway Company*, [(1875) L.R., 10 C.P. 307 at p. 317], referred to.

SUNDARA AYYAR, J.—*Obiter*: No actual or verbal representation is necessary to give rise to estoppel. It is no contravention of the rule enacted in section 317, Civil Procedure Code (Act XIV of 1882) to hold that *A* is estopped in such a case as even a title acquired by a statute may be waived just like a title under a private conveyance. It is fraudulent within the meaning of section 317, Civil Procedure Code on *A*'s part to have obtained a sale certificate in his name after his attestation.

Abdul Aziz v. *Kanthu Mullik*, [(1911) I.L.R., 38 Calc., 512], *Krishnan Chetty* v. *Vellaichami Thevan*, [(1911) 21 M.L.J., 1077], *Madras Hindu Mutual Benefit Permanent Fund* v. *Ragava Chetti*, [(1896) I.L.R., 19 Mad. 200], *Bishan Dial* v. *Ghazi-ud-din*, [(1901) I.L.R., 23 All., 175], and *Monappa* v. *Surappa* [(1888) I.L.R., 11 Mad. 234], distinguished.

SADASIVA AYYAR, J. *Obiter*: Section 317, Civil Procedure Code, will be a bar only if plaintiff is obliged to set up as part of his case for relief the plea that *A* purchased in court auction as *benamidar* for *B*. After the Transfer of Property Act no waiver or transfer of rights can be recognised in the case of immovable property in the absence of a registered instrument. Having regard to the ordinary course of conduct of Indians in this Presidency, attestation by a person who has or claims any interest in the property covered by the document must be treated *prima facie* as a representation by him that the title and other facts

* Second Appeal No. 182 of 1910.

relating to title recited in the document are true and will not be disputed by him in favour of the obligee under the document.

KANDASAMI v. NAGALINGA.

SECOND APPEAL against the decree of F. D. F. OLDFIELD, the District Judge of Tanjore, in Appeal No. 42 of 1909, preferred against the decree of T. KRISHNASWAMI NAYUDU, the District Munsif of Mayavaram, in Original Suit No. 1 of 1908.

The facts of this case are set out in the judgment of SUNDARA AYYAR, J.

The Honourable Mr. *T. V. Seshagiri Ayyar* for the appellant.

T. R. Venkatarama Sastri for respondents Nos. 4 to 6.

SUNDARA AYYAR, J.—The suit in this case is for restraining first defendant from interfering with the plaintiffs' enjoyment of certain lands. The plaintiffs obtained a sale of it from the second defendant in 1906. Prior to the sale the land had been sold in execution of a decree against the second defendant in a small cause suit. The first defendant was the auction purchaser. The auction sale took place in June 1904. Admittedly the land previously belonged to the second defendant. The plaintiffs' case is that the auction purchase was really for the benefit of the second defendant and that the first defendant was only a *benamidar*. This plea has been upheld by both the Courts. The first defendant set up his own title to the land as the real purchaser and he contended that section 317 of the Civil Procedure Code was a bar to the plaintiffs' suit. Both the lower Courts held that section 317 was not applicable in the circumstances of the case. There was an issue raised as to whether first defendant was estopped by his conduct from questioning plaintiffs' title. The conduct referred to consisted in the first defendant allowing the second defendant to remain in possession of the land for a period of about three years after the auction sale without taking any steps to assert his own title and in his attesting the sale deed executed by second defendant in plaintiffs' favor (Exhibit C). The first defendant stated that he made the attestation without any knowledge of the contents of Exhibit C. But his story has been disbelieved by both the Courts. I am of opinion that this appeal may be disposed of on the issue of estoppel, Exhibit C was executed on the 9th July 1906. Till then the first defendant did not take steps to obtain a sale certificate, although the sale took place in April 1904 and it was confirmed in June 1904. His application for a certificate was made in 1907 after he had

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attested Exhibit C. Now Exhibit C recited that the land belonged to the second defendant and was in his enjoyment. And this document as found by the lower Courts was attested by the first defendant with full knowledge of its contents. The District Munsif found more against the first defendant. He was of opinion that there were good reasons to believe that "it was the first defendant who brought about the sale and it cannot therefore be doubted for a moment that his attestation and also that of his undivided son were obtained as security for the vendees in token of the first defendant having admitted that he was only a *benamidar* in respect of the land purchased in Court auction and which was with his full knowledge and consent included in the sale deed." The District Judge does not say that it was the first defendant who brought about the sale-deed. If he did so there could be no doubt that first defendant would be estopped from asserting his own ownership, subject to an argument of Mr. Seshagiri Ayyar which I shall hereafter notice that the rule of estoppel is not applicable to such a case. There are no reasons to believe that the District Judge did not really agree with the District Munsif in his observation as to the part taken by the first defendant in the matter of the execution of the sale-deed (Exhibit C). But it is not necessary to rest my judgment on the assumption that the District Judge intended to agree with the District Munsif. It would be quite enough if the first defendant with the knowledge of the recital that the land belonged to the second defendant and was in his enjoyment as owner attested the sale-deed executed by him to the plaintiffs. In the leading case of *Sarat Chunder Dey* v. *Gopal Chunder Laha*(1), the Judicial Committee of the Privy Council expounding the law of estoppel observe: "The principle on which the law and the statute rest is, that it would be most inequitable and unjust to him that if another, by a representation made, or by *conduct amounting to a representation*, has induced him to act as he would not otherwise have done, the person who made the representation should be allowed to deny or repudiate the effect of his former statement, to the loss and injury of the person who acted on it." It is quite clear both from this exposition and from the words of section 115 of the Indian Evidence Act, themselves that no actual verbal representation is necessary to give rise to estoppel. It is quite enough

(1) (1892) L.R. 19, I.A., 203 at pp. 215 & 216.

that the conduct of a party leads another to act in the belief that he asserts no claim to the property. A passage from the judgment of Lord CAMPBELL in *Cairncross* v. *Lorimer*(1) is cited by the Privy Council in the judgment. "I am of opinion that, generally speaking, if a party having an interest to prevent an act being done has full notice of its having been done, and acquiesces in it, so as to induce a reasonable belief that he consents to it, and the position of others is altered by their giving credit to his sincerity, he has no more right to challenge the act to their prejudice than he would have had if it had been done by his previous license." Their Lordships go on to say: "These words were used with reference mainly to acts indicating only subsequent consent to an appointment which had been made, and which might have been objected to when originally made; but they apply *a fortiori* in a case like the present, where the person estopped was a party to the transaction itself, which he, or others taking title from him, seek to challenge after a considerable interval of time." In *Carr* v. *London and North Western Railway Company*(2), a very leading decision on the question of estoppel the following was one of the propositions laid down: "Another proposition is, that, if a man, whatever his real meaning may be, so conducts himself that a reasonable man would take his conduct to mean a certain representation of facts, and that it was a true representation, and that the latter was intended to act upon it in a particular way and he with such belief does act in that way to his damage, the first is estopped from denying that the facts were as represented." Here at the time of the execution of Exhibit C the first defendant was the ostensible purchaser at a court auction. The sale-deed was executed by the second defendant. Not only the first defendant, but his son also attested the document. It is impossible to doubt that the object of the attestation was to reassure the plaintiff in taking a sale deed from the second defendant when the ostensible purchaser at the auction sale was the first defendant. We have no hesitation in saying that the first defendant must be held to be estopped from asserting his own title to the land.

It was argued by Mr. Seshagiri Ayyar that section 317 embodies a rule of public policy and that there can be no estoppel

(1) 3 Macq. 829. (2) (1875) L.R., 10, C P., 307 at p. 317.

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contravening that rule. In my opinion there is no contravention at all of the rule in section 317 in holding that the first defendant is estopped. Section 317 lays down the rule that where property is brought to sale in Court auction a suit cannot be instituted on the ground that the defendant was only a benamidar for the plaintiffs. The utmost that could be said in favour of the first defendant is that the effect of the section is to create some sort of title in him though this position is denied by the respondent. But assuming it to be so, what is there to prevent a person who gets title, we shall suppose under a statute, from afterwards allowing it to be sold as the property of another person? I can find no reason why he should not do so any more than why a person having a title under a private conveyance should not allow it to be sold as the property of another. The cases cited by Mr. Seshagiri Ayyar, viz., *Abdul Aziz* v. *Kanthu Mullik*(1), *Krisnan Chetty* v. *Vellaichami Tevan*(2), and *Madras Hindu Mutual Benefit Permanent Fund* v. *Ragava Chetti*(3), are all inapplicable to the case. The attempt there was to get behind the very rule itself enacted by the statute by setting up a contention of estoppel. I might also put this judgment on another ground. Section 317 provides, "nothing in this section shall bar a suit to obtain a declaration that the name of any person certified as aforesaid was inserted in the certificate fraudulently." After the first defendant attested Exhibit C which distinctly stated that the land belonged to the second defendant it was fraudulent on his part to have obtained in 1907 a sale certificate in his own name.

On these grounds the Second Appeal must be dismissed with costs.

SADASIVA AYYAR, J.

SADASIVA AYYAR, J.—As many of the questions argued in the Second Appeal are important questions, I do not think it inappropriate to add a few words of my own. If the plaintiffs are obliged to set up as part of their case for relief, the allegation that the first defendant made the purchase *benami* and cannot succeed except by proving that fact, I am inclined to hold that section 317 will be a bar to the suit. I agree with the observations in *Bishan Dial* v. *Ghazi-ud-din*(4), that although section 317 should be construed strictly the words of the section ought

(1) (1911) I.L.R., 38 Calc., 512.
(2) (1911) 21 M.L.J., 1077.
(3) (1896) I.L.R., 19 Mad., 200.
(4) (1901) I.L.R., 23 All., 175.

to be given effect to if they apply aptly to the plaint put forward by the plaintiff and I am also not inclined to try to whittle away the effect of the section as has been done in some cases by excluding from its operation cases where the suit is brought against the purchaser's representatives and assignee. I also agree with Mr. Seshagiri Ayyar that after the Transfer of Property Act no waiver or transfer of rights can be recognised in the case of immoveable property in the absence of a registered instrument. Hence the observations in *Monappa* v. *Surappa*(1), may not apply to cases of alleged transfer by the subsequent conduct of the *benamidar* or by an agreement with the *benamidar*, if such conduct or agreement took place after Act IV of 82 came into force. It is also clear as decided in *Krishnan Chetty* v. *Vellaichami Thevan*(2), that estoppel by itself cannot form the basis of the cause of action or claim. But in this case, the plaintiffs are in possession; possession is *primâ facie* evidence of title; the second defendant had conveyed all his rights to second plaintiff and plaintiff's vendor and could not therefore deny plaintiff's title; and if the first defendant as contended in paragraph 6 of the plaint is estopped by his conduct from asserting any title as against the plaintiffs, the plaintiffs need not rely at all upon and need not prove the allegation that their title is based upon the first defendant having purchased in the court auction sale as the *benamidar* of second defendant. They need only prevent the second defendant from claiming any title under the court auction purchase and this they could do by setting up the doctrine of estoppel.

As regards the question of estoppel also, though the District Judge does not in so many words say that the first defendant himself brought about the sale made by the second defendant to the second plaintiff and the first plaintiff's vendor, he says "it is possible to concur generally in the Lower Court's conclusions" except as regards two matters. One of the conclusions of the District Munsif in which the District Judge evidently so concurs seems to be that the first defendant did bring about the sale and did not merely attest the document (Exhibit C).

I am also of opinion that having regard to the ordinary course of conduct of Indians in this Presidency, attestation by a

(1) (1889) I.L.R., 11 Mad., 234. (2) (1911) 21 M.L.J., 1077.

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person who has, or claims, any interest in the property covered by the document must be treated *primâ facie* as a representation by him that the title and other facts relating to title recited in the document are true and will not be disputed by him as against the obligee under the document.

I therefore concur in the conclusion that the Second Appeal must be dismissed with costs.

APPELLATE CIVIL.

Before Mr. Justice Sundara Ayyar and Mr. Justice Sadasiva Ayyar.

1912. July 25 and 26.

G. VEERAYYA (MINOR BY MOTHER AND NEXT FRIEND NARAKKA, PLAINTIFF), APPELLANT,

v.

G. GANGAMMA (DEFENDANT), RESPONDENT.*

Limitation Act (IX of 1908), sec. 6 and art. 125—Widow's alienation—Right of several reversioners, independent—Not questioned by deceased father for twelve years—Right of minor son to question after twelve years but within three years of attaining majority.

For the purpose of questioning an alienation made by a Hindu female possessing a limited estate one reversioner does not claim through another, and consequently laches on the part of a father who died without instituting a suit within twelve years from the date of the alienation does not disentitle his son from filing a suit for the purpose even after twelve years after the alienation, if he was a minor at the time and files the suit within three years of attaining majority.

Section 6 and article 125 of Limitation Act considered.

Govinda Pillai v. *Thayammal* [(1905) I.L.R., 28 Mad., 57], *Bhagwanta* v. *Sukhi* [(1900) I.L.R., 22 All., 33 (F.B.)], *Abinash Chundra Majumdar* v. *Hari Nath Saha* [(1904) 9 C.W.N., 25], *Sakyahani Ingle Rao Sahib* v. *Bhavani Bozi Sahib* [(1904) I.L.R., 27 Mad., 588], and *Chinnaveerayya* v. *Lakshmi Narasimha* [(1912) 22 M.L.J., 375], followed.

Mullapudi Ratnam v. *Mullapudi Ramayya* [(1902) I.L.R., 25 Mad., 731], and *Chhaganram Astikram* v. *Bai Motigavri* [(1890) I.L.R., 14 Bom., 512], not followed.

Chiruvolu Punnamma v. *Chiruvolu Perrazu* [(1906) I.L.R., 29 Mad., 390 (F.B.)], referred to.

Krishnier v. *Lakshmiammal* [(1908) 18 M.L.J., 275], distinguished.

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* Second Appeal No. 422 of 1911.