

KRISHNA
AIYAR
v.
SAVURI-
MUTHU
PILLAI.
—
SESHAGIRI
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between his assignor and the judgment-debtor. Vide *Sinnu Pandaram v. Santhoji Row*(1). That has no application to the cases of suits for damages. I therefore agree with SADASIYA AYYAR, J., that there is no cause of action against the second defendant. This being my view it is unnecessary to consider the question of limitation.

As I have held that there is no cause of action against the second defendant, I would reverse the decrees of the Courts below, and dismiss the suit against the second defendant with costs throughout.

N.R.

APPELLATE CIVIL—FULL BENCH.

*Before Sir John Wallis, Kt., Chief Justice, Mr. Justice Oldfield
and Mr. Justice Seshagiri Ayyar.*

VAITHESWARA AIYER (PLAINTIFF), APPELLANT,

v.

SRINIVASA RAGHAVA IYENGAR AND FIVE OTHERS
(DEFENDANTS NOS. 1 TO 5 AND SIXTH RESPONDENT IN DISTRICT COURT),
RESPONDENTS.*

*Benamidar, suit on mortgage by, maintainability of—Real owner, whether
a necessary party.*

Held by the Full Bench that a person who is not the real mortgagee but only a benamidar for him can institute a suit to enforce the mortgage and that the real mortgagee need not be a party. *Choudhri Gur Narayan v. Sheo Lal Singh* (1919) 36 M.L.J., 68 (P.O.); s.c., 46 I.A., 1, followed.

SECOND APPEAL against the decree of J. G. BURN, the District Judge of Trichinopoly, in Appeal No. 168 of 1916, preferred against the decree of A. S. BALASUBRAHMANI AYYAR, the Subordinate Judge of Trichinopoly, in Original Suit No. 113 of 1914.

This was a suit upon a hypothecation bond executed by the first defendant and another in favour of the defendants' second witness, who assigned his right to the plaintiff. The defendants pleaded *inter alia* that the plaintiff was only a benamidar for defendants' first witness, who was the real assignee, that the defendants' first witness ought to have been made a party and that

(1) (1903) I.L.R., 26 Mad., 428.

* Second Appeal No. 1815 of 1917.

1918,
October
25, 31,
1919,
February 4.

the suit was therefore not maintainable. Both the lower Courts upheld the above pleas and dismissed the suit. Plaintiff preferred this Second Appeal.

The Second Appeal came on for hearing in the first instance before PHILLIPS and NAPIER, JJ., and the following

ORDER OF REFERENCE TO A FULL BENCH was made by

NAPIER, J.—This is a suit on a mortgage by an assignee mortgagee. The lower Appellate Court has found that the plaintiff was a benamidar for defence first witness and has dismissed the suit obviously on the ground that a benamidar cannot sue on title. Before us it is urged on the authority of *Singa Pillai v. Govinda Reddi*(1) that such a benamidar can sue. The case relied on is a direct authority for that contention. We are however unable to accept it as conclusive. In this Court ever since the decision in *Kuthaperumal Rajali v. The Secretary of State for India*(2) it has, we think, been consistently held that a benamidar must show some right to sue under the general law apart from the fact that he lent his name for the purchase. At least we are aware of no decision to the contrary and no such case has been relied on by the learned Judges who decided *Singa Pillai v. Govinda Reddi*(1). With deference to the learned Judges, we should be prepared to consider the matter concluded by the doctrine of *stare decisis* but for the fact that the later decision is published in the authorized Law Reports. But that being the case, we think that the question must be referred to a Full Bench. We do not think it necessary ourselves to examine the cases in other Courts as was done in *Kuthaperumal Rajali v. The Secretary of State for India*(2) and has been done in *Singa Pillai v. Govinda Reddi*(1) but we would offer a few observations on the latter case. With deference to SPENCER, J., we do not think that the unreported case, *Chidambara Mandaroyan v. Singaram*(3) was quoted with approval in *Kuthaperumal Rajali v. The Secretary of State for India*(2). On the language of the learned Judges we gather that they did not approve of it and sought to distinguish it on the ground that the plaintiff in that case may have been appointed an agent. In the present case such a contention could not be raised as both the plaintiff and the defence first witness have

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(1) (1918) I.L.R., 41 Mad., 435.

(2) (1907) I.L.R., 30 Mad., 245.

(3) S.A. No. 186 of 1903 (unreported).

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sought to make out that plaintiff was the real purchaser and the plaintiff was admittedly not an agent. SESUAGIRI AYYAR, J., relies on *Sri Raja Datta Venkata Surya Narayana Jagapathi Raju v. Goluguri Bapiraju*(1) as an inroad on the rights of the real owner. With deference we do not think that it is. The plaintiff in that case was a successful bidder at a Court auction of certain property and a sale certificate was issued to him. He subsequently sued to have the sale cancelled on the ground of a fraudulent suppression of facts at the auction. The plaintiff was found to be a benamidar. The learned Judges following *Kuthaperumal Rajali v. The Secretary of State for India*(2) among other cases enunciated the proposition on page 148 that a *benami* transaction does not vest any title to an immovable property, but they continue and say that that does not prevent a person who has been found to be an agent for an undisclosed principal in a contract for purchase of land from suing for any relief *in respect of the contract* even though the land has subsequently been conveyed to him. In our opinion this decision does not even go so far as the reservation in *Kuthaperumal Rajali v. The Secretary of State for India*(2) for in the latter case the right of an agent for an undisclosed principal to bring any suit appears to be conceded. We think that the decision in *Singu Pillai v. Govinda Reddi*(3) does distinctly negative the principle laid down in *Kuthaperumal Rajali v. The Secretary of State for India*(2) and accepted in *Sri Raja Datta Venkata Surya Narayana Jagapathi Raju v. Goluguri Bapiraju*(1). It is necessary therefore to refer to a Full Bench the following question :

“ *When on the evidence it is found that an assignee mortgagee is a mere benamidar, can he sue on the mortgage ?* ”

ON THIS REFERENCE.—

A. Krishnaswami Ayyar (with *S. Subrahmanya Ayyar*) for appellant.—The recent Privy Council decision in *Choudhri Gur Narayan v. Sheo Lal Singh*(4) holds that a benamidar can sue.

K. V. Venkatasubrahmanya Ayyar for *S. T. Srinivasagopala Achariya*, for fourth respondent (with *N. Rajagopalachariar* and *R. Srinivasa Ayyangar*).—The Privy Council case quoted in

(1) (1911) I.L.R., 34 Mad., 113.

(2) (1907) I.L.R., 30 Mad., 245.

(3) (1918) I.L.R., 41 Mad., 135.

(4) (1919) 86 M.L.J., 68 (P.C.); s.c., 46 I.A., 1.

favour of the appellant does not lay down that any and every benamidar can sue. It only lays down that if a benamidar sues and recovers property, he must hold it as trustee. Where the benamidar arranges a sale or mortgage in his own name and *is thus a party to the contract*, he can always sue. But where the real owner arranges a sale or mortgage but chooses to take the sale deed or mortgage deed in the name of another without that other being in any way a contracting party, then that other cannot sue. The finding in this case is that plaintiff knew nothing about the assignment. The respondent was not represented before the Privy Council in *Choudhri Gur Narayan v. Sheo Lal Singh*(1). It cannot be said that it intended to overrule the Madras decisions, which were the other way.

VAITHESWARA
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B.
SRINIVASA
RAGHAVA
IYENGAR.

The OPINION of the Court was expressed by

WALLIS, C.J.—We think that this question must be considered to have been settled by the recent pronouncement of the Privy Council in *Choudhri Gur Narayan v. Sheo Lal Singh*(1). The respondents were not represented, but the report of the argument shows that the divergent decisions of the Courts in India were placed before their Lordships by Mr. DeGruyther who appeared for the appellants. Mr. Amir Ali dealt with the point in the following very general terms :—

“ As already observed, the benamidar has no beneficial interest in the property or business that stands in his name ; he represents, in fact, the real owner, and, so far as their relative legal position is concerned, he is a mere trustee for him. Their Lordships find it difficult to understand why, in such circumstances, an action cannot be maintained in the name of the benamidar in respect of the property although the beneficial owner is no party to it.”

These very general observations appear to us to be conclusive of the question referred to us, and we accordingly answer it in the affirmative.

N.B.

(1) (1919) 86 M.L.J., 68 (P.C.) ; s.c., 46 I.A., 1.