

1905
June 3.

Before Mr. Justice Banerji.

BACHCHA AND ANOTHER (PLAINTIFFS) v. GAJADHAR LAL AND
OTHERS (DEFENDANTS).*

Construction of document—Sale deed—Vendee described as guardian of a certain minor—Benamidar—Right of benamidar to sue or appeal in his own name.

Where property which had belonged to the members of one family and has been sold by them was reconveyed by the purchasers to the representatives of the same family it was held that a description of one of the vendee's parties to the reconveyance as "Musammat Inayat Fatima, guardian of her son, Mahmud-ul-Hasan," was to be construed as importing a conveyance, not to the guardian in her own right, but to her son.

A benamidar can sue or appeal in his own name on behalf of the beneficial owner. *Nand Kishore Lal v. Ahmad Ata* (1) and *Yad Ram v. Umrao Singh* (2) followed.

THE facts out of which this appeal arose were as follows :—

Turab Ali, Liakat Ali, and Irshad Ali, three brothers, owned two houses in equal shares. They sold the houses on the 4th of November 1878 to Zahur Ali, Muzaffar Ali and Abdur Rahim. On the 13th of July 1887, the purchasers reconveyed the houses to Turab Ali, Latafat Ali, the son of Liakat Ali, and Musammat Inayat Fatima, wife of Irshad Ali. She was described in the deed of sale as the guardian of her son Mahmud-ul-Hasan. On the 5th of October 1887, Turab Ali and Latafat Ali sold their two-thirds share in the houses to Makhhan Lal and Chain Sukh, and Inayat Fatima also sold the remaining one-third to them. Her son Mahmud-ul-Hasan sold the same one-third share, on attaining majority, to Bachcha and another by a sale deed dated the 9th July 1897. The purchasers of this one-third share thereupon sued the purchasers from Musammat Inayat Fatima to recover possession thereof. The Court of first instance (Munsif of Kanauj) found on a construction of the sale deed of the 13th of July 1887, that Inayat Fatima was a purchaser on her own behalf and not on account of her son, and therefore dismissed the plaintiff's suit. On appeal the District Judge of Farrukhabad confirmed the decree of the Munsif, agreeing with the Munsif in his construction of the deed in

* Second Appeal No. 698 of 1903, from a decree of Louis Stuart, Esq., District Judge of Farrukhabad, dated the 11th of May 1903, confirming a decree of Babu Khired Gopal Banerji, Munsif of Kanauj, dated 7th of March 1903.

(1) (1895) I. L. R., 18 All., 69.

(2) (1899) I. L. R., 21 All., 380.

question. From this decree the plaintiffs appealed to the High Court.

Dr. *Tej Bahadur Sapru*, for the appellants.

Maulvi *Ghulam Mujtaba*, for the respondents.

BANERJI, J.—This appeal arises out of a suit brought by the appellants for partition of a third share of two houses which originally belonged in equal shares to three brothers, Turab Ali, Liakat Ali, and Irshad Ali. They sold the houses on 4th November 1878 to Zahur Ali, Muzaffar Ali, and Abdul Rahim. On 13th July 1887, the aforesaid purchasers reconveyed the houses to Turab Ali, Latafat Ali, son of Liakat Ali, and Musamat Inayat Fatima, wife of Irshad Ali. She was described in the sale deed as the guardian of her son Mahmud-ul-Hasan. On the 5th of October 1887 Turab Ali and Latafat Ali sold their two-thirds share in the houses to the defendants Makhan Lal and Chain Sukh, and Inayat Fatima also sold the remaining one-third share to them. Her son, Mahmud-ul-Hasan, on attaining majority, sold the said third share to the plaintiffs by sale deed, dated the 9th July 1897, and it is by virtue of this sale that the plaintiffs claim a third share of the two houses. One of the defendants to the suit is Reoti Ram, who alleges himself to be the purchaser of the two-thirds share of Turab Ali and Liakat Ali under an auction sale held in 1878, and it is as such purchaser that he has been made a party to the suit.

Both the Courts below have dismissed the suit on the sole ground that Inayat Fatima was the purchaser of a third share on her own behalf, that she was competent to sell that share to the defendants Makhan Lal and Chain Sukh, that Mahmud-ul-Hasan, the plaintiff's vendor, had no right to sell it, and that the plaintiffs had acquired no title under their purchase and were not competent to maintain the suit. Both these Courts have come to the above findings upon a construction of the sale deed executed in favour of Inayat Fatima and others on the 13th July 1887. The correctness of this construction is questioned by the appellants in their appeal.

The learned vakil for the respondents raised a preliminary objection to the hearing of the appeal on the ground that it has been found in a previous stage of this suit (and this is conceded

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on behalf of the appellants) that the plaintiffs are *benamidars* for the defendant, Reoti Ram, that Reoti Ram has not appealed, and that consequently the decree of the Court below has become final and this appeal is not maintainable. In my judgment there is no force in this objection. It has been held by this Court that a *benamidar* may sue in his own name on behalf of the beneficial owner—*Nand Kishore Lal v. Ahmad Ata* (1) and *Yad Ram v. Umrao Singh* (2). It necessarily follows that a *benamidar* can appeal on behalf of the beneficial owner. Consequently the appeal must be deemed to have been brought by the beneficial owner through and in the name of the *benamidar*. If Reoti Ram is the beneficial owner, as he has been found to be, this appeal must be regarded as having been brought by him through the plaintiffs. In his character of defendant to the suit he could not have appealed, as the decree of the Court below was one dismissing the suit and was consequently in his favour. I accordingly overruled the preliminary objection and heard the appeal.

In my judgment the Courts below have misinterpreted the sale deed of the 13th July 1887. In that document Inayat Fatima is, as I have already stated, described as “the guardian of Mahmud-ul-Hasan, minor.” Was the intention of the vendors to sell the third share to her personally or to her son, who was at the time a minor under her guardianship? The vendors were reconveying the property to the very family from which they had purchased it. The intention manifestly was to give it back to the person who would have held it, or at least the great bulk of it, had the sale to the vendors not taken place. The one-third share in question belonged to Irshad Ali and was sold by him. If he had not sold it, the whole of it, with the exception of the small share of his widow Inayat Fatima, would have gone to his son Mahmud-ul-Hasan. The reasonable inference, therefore, is that the property was restored to Mahmud-ul-Hasan. That this was so is evident from the fact that the person whose name was entered in the sale deed was described in it as his guardian. There could be no possible object in so describing her unless she purchased the property in her

(1) (1895) I. L. R., 18 All., 69.

(2) (1899) I. L. R., 21 All., 380.

capacity as guardian of her minor son. Ordinarily a purchaser is described as the son or daughter or wife (as the case may be) of some person. But unless the sale is made to the guardian of a minor in his or her capacity as such, that is, in reality to the minor himself, the purchaser is never described as guardian of the minor. I am unable to agree with the learned Judge that the mention of Inayat Fatima's son and ward in the sale deed was made as a description of Inayat Fatima. I am clearly of opinion that the sale deed has been misconstrued and that the property was sold under it to the minor and not to Inayat Fatima personally. She was not therefore competent to sell it to the defendants as her own property, as she professed to do. If she be taken to have sold it as the guardian of Mahmud-ul-Hasan, although she did not purport to do so, since she was appointed guardian by the Court and she did not obtain the permission of the Court to sell the property, the sale was void, or at least voidable at the instance of the minor, and could be repudiated by him. However, it is not the defendant's case that she sold it on behalf of her minor son. They assert that she herself was the purchaser and that her son, the plaintiffs' vendor, had no right to the property. Upon a true construction of the sale deed this contention cannot in my judgment be supported.

There were other questions raised in the case, such as that of the liability of the plaintiffs to make restitution to the defendant, which the Courts below have not determined.

As the suit was dismissed upon a preliminary point and the decision on that point is erroneous, I allow the appeal, set aside the decrees of the Courts below and remand the case to the Court of first instance under the provisions of section 562 of the Code of Civil Procedure for trial on the merits. The appellants will have the costs of this appeal. Other costs will follow the event.

Appeal decreed and cause remanded.

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