

1909

CH HAKAURI
KHAN
v.
PIR BAKSHI
KHAN.

undoubtedly had the power of revision. The appellant did apply to the Board and got from the Board of Revenue the order of which he complains. With that order the Civil Court is forbidden to interfere under section 167 of Act No. II of 1901.

This is certainly a matter in which the Board of Revenue could take cognizance of the disputes between the parties and no Court other than the Court of Revenue could take cognizance. The appeal fails and is dismissed with costs.

Appeal dismissed.

1909

January 23.

*Before Sir John Stanley, Knight, Chief Justice and Mr. Justice
Karamat Husain.*

HARI SINGH AND OTHERS (PLAINTIFFS) v. SHER SINGH AND ANOTHER
(DEPENDANTS.)*

*Code of Civil Procedure (Act No. XIV of 1882), section 317—when applica-
ble—Purchase made by a member of joint Hindu family—Plea that
purchase was made on behalf of family.*

When property is purchased at a Court sale in the name of one of the members of a Hindu family which is alleged to be a joint family and it is alleged that the purchase was made on behalf of the family, *held* that section 317 of the Code of Civil Procedure, 1882, has no application to such a case. The object of section 317 is to check *benami* purchases.

THE facts of this case are fully set out in the judgment of their lordships.

The Hon'ble Pandit *Sunder Lal* and Pandit *Moti Lal Nehru* for appellants.

Dr. *Tej Bahadur Sapru*, *Mun-hi Gokul Prasad* and *Babu Surendra Nath Sen* for respondents.

STANLEY, C.J., and KARAMAT HUSAIN, J.—The suit out of which this appeal has arisen was brought by the plaintiffs appellants for possession of a house. The plaintiffs impleaded in the suit two brothers namely *Sher Singh* and *Partab Singh*, claiming title to the house under a sale-deed executed on the 28th of April 1896, by *Sher Singh* alone purporting to act on behalf of himself and *Partab Singh*. *Partab Singh* filed a defence to the effect that he alone was the owner of the house under a purchase made by him and that he did not authorise his brother *Sher Singh* to execute the sale-deed in favour of the plaintiffs on his behalf. The suit was

* Second Appeal No. 1438 of 1907 from a decree of W. F. Kirton, Additional Judge of Moradabad, dated the 18th of July 1907 confirming a decree of *Mata Prasad*, Subordinate Judge of Moradabad, dated the 21st of November 1899.

dismissed in the Court of first instance, whereupon an appeal was filed but during the pendency of the appeal Partab Singh died childless, leaving a widow, namely the defendant respondent Musammat Misri. Musammat Misri was not brought upon the record within the period of six months allowed by law for that purpose and after the expiration of this period she applied to the learned Additional Judge, before whom the appeal was pending for an order declaring that the appeal had abated. This application was made on the 15th of August 1901. The answer to her application was that Sher Singh and Partab Singh formed a joint family and there was no necessity, in view of this fact, to bring Musammat Misri on the record, inasmuch as any interest which Partab Singh had, survived to his brother Sher Singh. Upon this application an order was passed on the 30th of September 1901, the particulars of which it is unnecessary at length to state. Suffice it to say the Court remanded the case to the Court of first instance with directions to that Court to take fresh evidence under sections 569 and 570 of the Code of Civil Procedure, Act XIV of 1882. Before this order was complied with the plaintiffs and Sher Singh agreed to refer their disputes to arbitration and these disputes were accordingly so referred and an award has been passed. Musammat Misri, the widow of Partab Singh was no party to this reference and is therefore clearly not bound by it. An award was made according to which the plaintiffs' claim for recovery of the house in dispute was allowed. Musammat Misri then came forward and applied that the award should be declared not to be binding upon her and that the suit should be disposed of. The award was then set aside on the 14th of December 1905. The case then came up for hearing on the 6th of February 1905, when Sher Singh without consulting Musammat Misri, refused to put in any evidence and ultimately the appeal was dismissed for want of prosecution. Then on appeal to the High Court the appeal was restored and directed to be heard on its merits and accordingly came before the learned Additional Judge from whose decision this appeal has been preferred.

1909

HARI SINGH

SHER SINGH,

Upon the important question in the case as to whether the house in dispute was owned by Partab Singh alone or by him and

1909

HARI SINGH

v.
SHER SINGH.

Sher Singh jointly, the learned Judge came to the conclusion that it was unnecessary to determine this question in view of the provisions of section 317 of the Code of Civil Procedure. In his judgment he says:—"It appears that as long ago as the year 1879 the property in question was sold in execution of a judgment-debt against the father of Partab Singh and Sher Singh and was bought in by Sheo Dayal in the name of Partab Singh, this Sheo Dayal Singh being the father-in-law of Partab Singh. Now under section 317, Civil Procedure Code, it was not open to Partab Singh's own father to question his title, nor did he or any one else ever do so, and I think it is useless for the present plaintiffs, therefore, to try and argue that the property was really joint family property." In this the learned Additional Judge was clearly in error. Section 317 of the Code has no application to a case of the kind. The object of that section was to check *benami* purchases. In this case the purchase was made by one member of a Hindu family which is alleged to have been a joint family, and the question which the Court ought to have decided was whether or not that purchase was made by Partab Singh as member of a joint Hindu family for himself or for himself and Sher Singh, the other member of the family. We cannot therefore decide this appeal without referring an issue to the lower appellate Court for determination and that issue is whether the house in dispute was purchased by Partab Singh for himself alone or for himself and for Sher Singh as members of a joint Hindu family. If it was purchased by him for himself and his brother, and the property was therefore joint family property, Musammatt Misri was not a necessary party to the suit. We therefore refer this issue to the lower appellate Court under order 41, rule 25 of Act No. V of 1908 and we direct the Court to take such relevant evidence as the parties may adduce. On return of its finding we allow the parties the usual ten days for filing objection.

Case remanded.