

Before Mr. Justice Macpherson and Mr. Justice Hill.

SASTI CHURN NUNDI (DEFENDANT) v. AUNOPURNA *alias* SIIONOKA,
WIDOW OF KOYLASH CHUNDER CHOWDHRY, DECEASED (PLAINTIFF.) *

1896
April 22.

Benamidar—Interference by benamidar with tenants of real purchaser—Real purchaser's right to sue benamidar—Civil Procedure Code (Act XIV of 1882), section 317.

At a sale in execution of a decree the plaintiff purchased certain property in the name of the defendant and continued in undisturbed possession of the property for eight years after the sale. He then brought a suit against the defendant for a declaration of his right and for an injunction to restrain him from interfering with it.

Held, affirming the decision of the Subordinate Judge, that the suit did not come within the scope of section 317 of the Civil Procedure Code, but was maintainable.

At an execution sale held in April 1882 the plaintiff, Koylash Chunder Chowdhry, purchased certain lands known as *taluk* Indra Narain Chowdhry and *taraf* Abdur Kader in the name of the defendant. He held undisturbed possession of the lands for eight years after the sale, when the defendant began to interfere with the tenants. The plaintiff accordingly brought a suit against him for a declaration of his rights and for an injunction restraining the defendant from interfering with the tenants. She alleged that the defendant had fraudulently procured the sale certificate to be granted in his name; but the plaintiff failed to establish the fraud. A decree, however, was made in his favour. The defendant appealed to the Subordinate Judge, who dismissed the appeal. The defendant then appealed to the High Court.

Babu *Harry Mohan Chuckerbutty* for the appellant.—As to the *taraf* Abdur Kader, the decision is not challenged. As to the *taluk* Indra Narain Chowdhry, there has not been possession for twelve years, but only for eight. The plaintiff's possession there-

* Appeal from Appellate Decree No. 2037 of 1894, against the decree of P. N. Banerjee, Esq., Subordinate Judge of Chittagong, dated the 31st of July 1894, affirming the decree of Babu Upendra Chandra Chatterjee, Munsif of Hathazari, dated the 12th of December 1893.

1896 fore is not sufficient to entitle him to a decree. It is this that
 SASTI CHURN distinguishes the case from the case of *Karamuddin Hosain v.*
 NUNDI *Niamut Fatehma* (1). Section 317 of the Civil Procedure Code is
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 AUNOORNA. therefore an express bar to this suit.

Babu *Upendra Nath Mitter* for the respondent.—The suit is not barred by section 317. In a similar case, the suit has been held to be maintainable—*Monappa v. Surappa* (2). To hold that section 317 is a bar would be to hold in effect that the purchase was invalid, because it was a *benami* transaction. But that is not so—*Mussumat Buhuns Kowur v. Lalla Buhoree Lall* (3).

Babu *Hurry Mohun Chuckerbutty* in reply.

The judgment of the Court (MACPHERSON and HILL, JJ.) was delivered by

MACPHERSON, J.—This appeal relates only to *taluk* Indra Narain Chowdhry in respect of which the plaintiff has obtained a decree. The defendant, who is the appellant before us, does not contest the correctness of the decision as regards *taraf* Abdur Kader. The plaintiff's case is that this *taluk* was sold at an execution sale in April 1882, and purchased by the plaintiff with his own money through the defendant, who fraudulently got his name registered as the auction-purchaser. He asserts that he has been in continuous and undisturbed possession since his purchase; and that a misunderstanding having now arisen between himself and the defendant his nephew, the latter has now commenced interfering with the tenants. The plaintiff, therefore, asks in this suit that his right may be declared and possession confirmed, and that the defendant may be restrained from interfering with the tenants. It has been found that the plaintiff has been in continuous possession of the *taluk* since his purchase, and that he was, in point of fact, the real purchaser, the defendant's name being only ostensibly used. The alleged fraud was found not to be established. The defendant's contention in the lower Appellate Court and again in this Court, apart from the merits of the transaction, was that under section 317 of the Civil Procedure Code this suit

(1) I. L. R., 19 Calc., 199.

(2) I. L. R., 11 Mad., 236.

(3) 14 Moo. I. A., 496.

could not be maintained. That section provides that "no suit shall be maintained against the certified purchaser on the ground that the purchase was made on behalf of any other person or on behalf of some one through whom such other person claims." 1896

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In our opinion the present case does not come within the scope of section 317. The plaintiff alleges that he is in possession, and he is found to be in possession of the *taluk* since the time of the sale. That possession is in itself a good title against all but the true owner. The defendant meets it by setting up the sale certificate which stands in his name. No doubt, if the effect of that sale certificate was to confer upon him a valid title as against the plaintiff, the plaintiff's suit must fail. But it has not that effect. Section 317 does not, as pointed out in *Mussumat Buhuns Kowur v. Lalla Buhuree Lall* (1), make all *benami* transactions invalid; nor, read with section 316, does it confer upon the ostensible purchaser a title as against the real purchaser. It merely declares that a suit shall not be maintained against the certified purchaser on the ground that he was only the ostensible purchaser. The ostensible purchaser could not insist on his certified title to recover from the real owner in possession. If, therefore, the defendant sets up the sale certificate as an answer to the plaintiff's case, there is nothing to prevent the Court from going into the question whether that sale certificate did or did not confer a valid title upon the defendant as against the plaintiff. It is not a case in which the plaintiff, relying on a sale certificate, seeks to obtain a decree for possession against the ostensible purchaser. Resting, as it does, on an existing possession, we do not think that it is a suit of the nature prohibited by section 317. The appeal is therefore dismissed with costs.

H. W.

Appeal dismissed.

(1) 14 Moo. I. A., 496, at p. 526.