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former kind of suit does not fall within the purview of article 91 of the schedule to the Indian Limitation Act. This view has been consistently accepted by all the High Courts and by their Lordships of the Privy Council. We may refer to the case of *Sangawa v. Huchangowda* (1) and the case of *Petherpermal Chetty v. Muniandy Serrai* (2).

The appeal has, in our opinion, no force and is dismissed with costs.

Appeal dismissed.

Before Mr. Justice Mukerji and Mr. Justice Ashworth.

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RAM RUP TELI (PLAINTIFF) v. KHADERU TELI AND OTHERS (DEPENDANTS).*

Civil Procedure Code, section 66—Joint Hindu family—Purchase at execution sale of property by father in the name of a stranger—Partition—Suit by member of family for possession of property so purchased.

The father in a joint Hindu family made a purchase at an execution sale of certain property in the name of one K, who was an outsider. Subsequently, the family property was partitioned and the particular piece of property in question fell to the share of R. R, being resisted in his attempt to obtain possession from K, brought a suit to have his right established and for possession. *Held*, that the suit was barred by section 66 of the Civil Procedure Code. *Baijnath Das v. Bishan Devi* (3), followed. *Nataraja Mudaliyar v. Ramasami Mudaliar* (4), *Bodh Singh Doodhooria v. Gunesh Chunder Sen* (5), *Narain Dei v. Durga Dei* (6), and *Ganga Sahai v. Kesri* (7), distinguished.

The plaintiff sued Khaderu Teli and several others on the allegation that he himself and the defendants

*Second Appeal No. 994 of 1925, from a decree of K. G. Harper, District Judge of Benares, dated the 14th of February, 1925, reversing a decree of Ali Ansat, Subordinate Judge of Jaunpur, dated the 5th of December, 1924.

(1) (1923) I.L.R., 48 Bom., 166. (2) (1908) I.L.R., 35 Calc., 551.
 (3) (1921) I.L.R., 42 All., 711. (4) (1922) I.L.R., 45 Mad., 856.
 (5) (1873) 12 Beng. L.R., 317. (6) (1913) I.L.R., 35 All., 138.
 (7) (1915) I.L.R., 37 All., 545.

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other than Khaderu Teli once formed a joint Hindu family. While the family was joint, Bihari Lal, the father of the defendant No. 2, as the then head of the family, purchased the property in suit, at an auction sale in execution of a decree, in the name of the defendant No. 1. Bihari Lal had made similar purchases in the names of people other than members of the family, but no dispute arose in respect of these properties. There was a partition in the family, and the property in suit fell into the share of the plaintiff. The plaintiff was resisted by the ostensible auction-purchaser, the defendant No. 1, and he therefore, brought this suit to have his right established and for possession.

The defence of Khaderu was that he was the real purchaser of the property, and that section 66 of the Code of Civil Procedure barred the suit.

The trial court held that section 66 of the Code of Civil Procedure was no bar to the maintenance of the suit, and that as a matter of fact Khaderu was not the real purchaser but that the purchase was made for the family by Bihari Lal, the head of the family.

There was an appeal by Khaderu, and the learned District Judge was of opinion that the plaintiff had failed to establish that Khaderu was not the real purchaser, but the real purchaser was the family consisting of the plaintiff himself and the defendants other than the defendant No. 1. The District Judge did not express any opinion as to the applicability or otherwise of section 66 of the Code of Civil Procedure. He accordingly allowed the appeal and dismissed the plaintiff's suit. The plaintiff appealed.

Pandit *Uma Shankar Bajpai* and Pandit *Narmadeshwar Prasad Upadhiya*, for the appellant.

Dr. *Kailas Nath Katju* and Pandit *Ambika Prasad Pande*, for the respondents.

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THE judgement of MUKERJI, J., after stating the facts as above, thus continued :—

In this Court I have heard arguments on section 66 and am of opinion that it completely bars the suit.

There is no allegation of fraud in the plaint. There was no allegation of fraud in the lower appellate court, and there is no allegation of fraud in the grounds of appeal filed in this Court. The simple position is this. The head of the family made the purchase on behalf of the family, but allowed the name of Khaderu to be entered in the sale certificate. The question is whether, in the circumstances, the plaintiff's suit is barred.

The plaintiff must accept the position that the purchase was made on his behalf as well as on behalf of the other members of the family. If he does not take up this position he has no title to the property at all. Therefore, he cannot escape from the position that the purchase was made on his behalf, although it was made through the agency of the then head of the family, Bihari Lal. The case, therefore, falls exactly within the language of section 66 of the Code of Civil Procedure.

A large number of rulings have been quoted before me. One of the cases quoted is *Narain Dei v. Durga Dei* (1). In this case, a widow in possession of her husband's property made a purchase at an auction sale, and employed the defendant's name as the certified purchaser. On her death, her daughter sued for recovery of the property. The question arose whether the suit was maintainable. Two learned Judges of this Court were of opinion that as the daughter, the plaintiff in the case, did not claim under her mother but under the last male owner, her father, section 66 of the Code of Civil Procedure had no application. I express no opinion on the correctness or otherwise of this statement of law. I

(1) (1913) I.L.R., 35 All., 133.

might, however, point out that, so long as the widow lived, she represented the entire estate, and it was her purchase that was giving title to her daughter. In the circumstances it might be argued, with some force at any rate, that the daughter was claiming through her mother. However, as I have said, that case is entirely different from the case before me. Here the purchase was made for the plaintiff as one of the members of the family. The case of *Baijnath Das v. Bishan Devi* (1) is directly in point. In that case the father of the joint Hindu family made a purchase in the name of the defendants. The father having died, one of the sons sued for a declaration that the property belonged to himself and his brother. It was held that the suit was not maintainable. This case was dissented from in *Nataraja Mudaliyar v. Ramasami Mudaliar* (2). That was a partition suit in which the *benamidar*, the head of the family who had made the purchase in the name of the *benamidar*, and other members of the family were parties. The question arose whether the suit was maintainable against the *benamidar*, and it was held that it was. That case is easily distinguishable, though the learned Judges thought proper to dissent from the view taken in this Court in *Baijnath's* case. In the partition suit, the members of the family other than the person who was responsible for the *benami* purchase, might be given property other than the property in question, and the partition could go on without any legal bar. Then it would be a matter between the auction-purchaser and the head of the family, who was responsible for the *benami* purchase, to settle between themselves who should get the property. Other cases have also been cited. The case of *Ganga Sahai v. Kesri* (3) is quite different. There one of the three decree-holders executed the decree for the benefit of him-

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(3) (1915) I.L.R., 37 All., 545.

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self and other decree-holders. It was a mortgage decree. In execution of it the property was sold and was purchased by the decree-holder who was actually taking an interest in the execution of the decree. It was held that the purchase was made on behalf of all the three decree-holders. There can be no doubt, as their Lordships of the Privy Council pointed out, that there was no question of *benami* purchase. It would be difficult to see how it could be a *benami* purchase, as the name of one of the decree-holders stood in the sale certificate. Another case, and the leading case on the point, is the case of *Bodh Singh Doodhuria v. Gunesh Chunder Sen* (1). This was a case of the head of the family purchasing property in his own name at an auction sale. It was laid down that his purchase was for the entire family and there is again no question of *benami* purchase.

I am of opinion that, however sad may be the position of the plaintiff owing to the fact that partition has been carried out in the family, I am unable to take the case out of the provision of section 66 of the Code of Civil Procedure and must hold, and do hold, that it is barred by that provision of law.

The result is that the appeal fails and is hereby dismissed with costs.

ASHWORTH, J.—I concur.

Appeal dismissed.