

1897.

RATANCHAND
v.
JAVHER-
CHAND.

were administering the estate of Parbhudas, he would have to pay the funeral expenses of the widow; he would also have to pay the defendant the legacy left him by the widow, and we think that the fact that the defendant now claims his legacy by way of set-off cannot affect the merits of the claim. The Judge of the first Court was evidently right upon this point, and we do not understand why the Subordinate Judge, A. P., raised it, seeing that the plaintiff never made it a ground of appeal.

We vary the decree of the lower appellate Court by awarding the house to the plaintiff to be taken possession of only after he has paid into Court for the use of the defendant the sum of Rs. 150. Costs throughout in proportion, except the costs of Exhibit 8 in appeal, which are to be borne by the plaintiff.

Decree varied.

APPELLATE CIVIL.

Before Sir C. F. Farran, Kt., Chief Justice, and Mr. Justice Candy.

1897.
July 27.

DAGDU (ORIGINAL PLAINTIFF), APPELLANT, v. BALVANT RAMCHANDRA NATU AND ANOTHER (ORIGINAL DEFENDANTS NOS. 1 AND 2), RESPONDENTS.*

Benami—Benamidár, right of, to sue in his own name—Purchase by a non-agriculturist in name of an agriculturist—Suit by benamidár for redemption—Court fees payable as if real purchaser was plaintiff—Dekkhan Agriculturists' Relief Act (Act XVII of 1879)—Practice—Procedure.

Where a purchase is made *benami* and a suit is brought by the *benamidár* in order that the real purchaser may escape the consequences to which the latter would be liable if he purchased and sued in his own name, the Court will look behind the record to see who the real purchaser is.

A *benamidár* may maintain a suit in his own name, but the Court will put the defendant in the same position as if the real were the actual plaintiff.

One Dagdu, an agriculturist, purchased certain land *benami* for Kellkar, a non-agriculturist, and brought a suit for redemption under the provisions of the Dekkhan Agriculturists' Relief Act (Act XVII of 1879). Under the notification of the Government of India, No. 2092, dated the 29th July, 1881, the fees in case of suits by agriculturists for redemption were remitted, and the plaintiff, therefore, paid no stamp duty on the plaint.

* Appeal, No. 29 of 1897.

Held, that Dagdu might maintain the suit in his own name, but must pay the usual stamp fees, and that the suit should proceed as an ordinary suit as though Kelkar was the nominal as well as the real plaintiff.

1897.

DAGDU
v.
BALVANT
R. NATU.

APPEAL from the decision of Ráo Bahádur N. N. Nanavati, First Class Subordinate Judge of Poona.

Suit for redemption. The plaintiff, who was an agriculturist, alleged that he had purchased the land in question at an execution sale. He now sued to redeem it from a mortgage for Rs. 1,000, dated the 8th June, 1874, and for possession.

The defendants pleaded (*inter alia*) that the plaintiff was merely a *benamidár* having bought the land *benami* for one Shridhar Ballal Kelkar, who was the real purchaser and the real plaintiff. They contended that the *benamidár* was not entitled to bring this suit, and that Kelkar, who was not himself an agriculturist, was using the plaintiff in order to obtain the benefits of the Dekkhan Agriculturists' Relief Act.

The Subordinate Judge dismissed the suit, holding that the plaintiff, who was a *benamidár* for Kelkar, had no right to sue. The following is an extract from his judgment:—

“A *benamidár* can, no doubt, sue in his own name (I. L. R., 18 All., 39), but in this case there are reasons why the plaintiff should not be allowed to sue in his own name. The suit is a barefaced attempt to defraud the public revenue. By the plaintiff suing as an agriculturist, a fee of Rs. 484 on the plaint is lost to Government. This suit is, again, an attempt to take undue advantage of the provisions of the Dekkhan Agriculturists' Relief Act, which provides a special mode of taking account in transactions in which agriculturists are concerned, or by which agriculturists are affected (*vide* sections 12 and 13 of the Dekkhan Agriculturists' Relief Act). But this is a privilege which is intended for agriculturists only (*vide* P. J., 1882, p. 424, and P. J. 1884, p. 203).”

The plaintiff appealed.

Balkrishna N. Bhajekar, for the appellant (plaintiff):—The evidence does not show that the plaintiff is a *benamidár*. Kelkar has expressly disclaimed any interest in the property. But even if the plaintiff is a *benamidár* he is entitled to bring the suit in his own name—*Annaji v. Bapuchand*⁽¹⁾; *Ravji v. Mahadev*⁽²⁾;

(1) I. L. R., 7 Bom., 520.

(2) *Ante* p. 672.

1897.

DAGDU
v.
BALVANT
R. NATU.

Bhola Pershad v. Ram Lal⁽¹⁾. Further, we contend that the Judge ought to have made Kelkar a party to the suit.

Narayan G. Chandavarkar, for the respondents (defendants):—The Dekkhan Agriculturists' Relief Act was not passed with a view of benefiting persons who are not agriculturists. It was passed for the benefit of agriculturists only—*Amichand v. Kanhu*⁽²⁾; *Rajaram v. Lakshman*⁽³⁾. On the evidence the Judge found, as a fact, that the plaintiff purchased the property *benami* for Kelkar. That being so, the plaintiff could not maintain the suit in his own name notwithstanding the disclaimer by Kelkar—*Hari Gobind v. Akhoy Kumar*⁽⁴⁾.

FARRAN, C. J.:—Upon the issue of fact which arises in this appeal we have arrived at the same conclusion as the Subordinate Judge, First Class, *viz.*, that the purchase by the plaintiff Dagdu of the property in suit at the Court's sale referred to in the plaint was a *benami* purchase for Kelkar, and that the latter is conducting this suit in the plaintiff's name for his own benefit. Though each strand in the rope of proof may not of itself suffice to establish that position, yet all the threads when taken in combination lead, we think, with irresistible force to that result. The facts are set out in the judgment of the Subordinate Judge and it is unnecessary for us to repeat them. The learned pleader for the appellant did not, indeed, discuss them as a whole, but contented himself with contending that certain facts upon which the Subordinate Judge relied were not inconsistent with an opposite view to that which the Subordinate Judge has adopted, but we should not be justified in reversing a finding of fact upon such a partial review of the evidence. When it is considered as a whole we think that there can be but little doubt that the finding of the lower Court is correct.

The suit has been brought by the plaintiff Dagdu as an agriculturist, under the provisions of the Dekkhan Agriculturists' Relief Act, for the possession of field Survey No. 428 or for redemption and possession of this land along with other fields. The plaintiff has correctly valued his claim as found by the Subordinate Judge,

(1) I. L. R., 24 Cal., 34.

(2) P. J., 1884, p. 203.

(3) P. J., 1882, p. 424.

(4) I. L. R., 16 Cal., 364.

but on the ground of being an agriculturist has paid no stamp duty on the plaint, in so far as the suit is one for redemption. The Subordinate Judge has rejected the claim upon that ground. Hence this appeal.

It is not suggested that Kelkar, the real purchaser of the land in suit, is an agriculturist. The question, therefore, arises whether a *benami* purchaser suing on behalf of the real owner, or, to state the relation in another form, the real owner suing in the name of an agriculturist nominal plaintiff is entitled to the benefit of the notification of the Government of India, No. 2092, dated 29th July 1881⁽¹⁾, remitting the fees in the case of suits for the redemption of mortgaged property when the plaintiff is an agriculturist. The case, so far as we are aware, is one of the first impression. In the somewhat analogous case of a pauper suing on behalf of another person really interested in both Courts of Common Law and Equity in England it has been held that he will not be allowed to continue the action or suit unless he gives security for costs—*Burke v. Lidwell*⁽²⁾; *Andrews v. Marris*⁽³⁾. The law is thus stated in Chitty's Archbold, Chap. XXXIII, p. 399, Ed. (1885): "It may also be taken as a general rule that where another person is in fact proceeding with an action in the name of the party on the record, and that party is in a state of pauperism and insolvency, the Court will stay the proceedings until security for costs be given." We refer to this practice to show that in some cases the Court will look beyond the record to see who is the real plaintiff in the suit and will put the defendant in the same position as if the real were the actual plaintiff.

It is not, we think, open to us, having regard to the ruling in *Ravji v. Mahadev*⁽⁴⁾, to hold that a *benami* purchaser is not entitled to maintain a suit in his own name, but that case also shows that the owner subsequently added as a plaintiff is treated as the real plaintiff throughout suing in the name of his *benami-dár*. For the purpose of limitation the subsequent change of names is immaterial. In the leading case upon this subject, *Nand*

(1) See *Bombay Government Gazette*, (2) 1 J. and L., 703.

1881, Part I, p. 420.

(3) 7 Dowl., 712.

(4) *Ante* p. 672.

1897.

DAGDU
v.
BALVANT
R. NATU.

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DAGDU
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BALVANT
R. NATU.

Kishore v. Ahmad Abo⁽¹⁾, the Court recognises with approval the principle deducible from the cases of *Fuzzebun Beebee v. Omdah Beebee*⁽²⁾ and *Meheroonissa Bibee v. Hur Churn Bose*⁽³⁾ that where the purchase is made by the real purchaser in the name of a *benamidār* to escape the consequences in which a purchase in his own name would involve him, the Court will look behind the record to see who the real purchaser is—at least these cases which embody that principle are cited with approval by the Allahabad High Court. In the present case we cannot doubt that Kelkar bought the equity of redemption of the lands in suit in the name of the plaintiff Dagdu to enable him to sue without payment of the usual stamp fee and to obtain the benefit resulting from the provisions of the Relief Act in favour of agriculturists. This, in our opinion, he cannot be permitted to do. We think, however, that the suit should be allowed to proceed as an ordinary suit on payment of the usual stamp fees as though Kelkar was the nominal as well as the real plaintiff. This decision is not, in our opinion, in any way at variance with *Annaji v. Bapuchand*⁽⁴⁾, or *Gulabpuri v. Pandurang*⁽⁵⁾, or *Amichand v. Kanhu*⁽⁶⁾, though in the latter two cases it was apparent that persons other than the agriculturist plaintiff might under certain circumstances reap a considerable portion of the advantage derived from the suit. That is, however, a result which the Relief Act contemplates in some instances—section B (z). There was no doubt that in these cases the actual plaintiff was an agriculturist and the stamp objection did not arise.

We shall, therefore, remit the case, giving the plaintiff three months' time within which to pay the legal stamp fee upon the plaint. Should he not do so, the decree will be confirmed with costs. If he does, the case will be heard on the merits. Costs to abide the result.

Case remitted.

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

(2) 10 Cal. W. Rep., 469.

(3) 10 Cal. W. Rep., 220.

(4) I. L. R., 7 Bom., 520-

(5) P. J., 1886, p. 142.

(6) P. J., 1884, p. 203.