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that due for the three years preceding suit, *viz.*, Rs. 17-7-10. We can find no precedent for such an order in the decree as that the defendants shall pay in future to the plaintiff and his heirs his share in the allowance without giving any further trouble. It could not be executed, for the amount of the allowance is variable, and defendants are not liable till they recover payment from Government. We must erase that from the decree, substituting therefor a declaration of the plaintiff's title. We amend the decree in the two points above mentioned; in other respects we confirm it. The respondent must bear the costs of this appeal.

Decree confirmed.

APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Ranade.

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RAVJI APPAJI KULKARNI AND ANOTHER (ORIGINAL PLAINTIFFS), APPELLANTS, *v.* MAHADEV BAPUJI KULKARNI (ORIGINAL DEFENDANT), RESPONDENT.*

Limitation—Limitation Act (XV of 1877), Sec. 22—Civil Procedure Code (Act XIV of 1882), Sec. 27—Court sale—Benami purchase—Suit by benami purchaser—Addition of real purchaser as co-plaintiff—Continuation of suit.

The plaintiff Ravji as owner of certain land brought this suit on the 31st January, 1894, for damages for loss of crops, and in respect of loss caused by the defendant's obstructing him in cultivating the land. The dates of the causes of action set forth in the plaint were, respectively, the 12th September, 1891, the 12th March, 1892, February, 1892, and 27th October, 1892. In the course of the proceedings, the defendant ascertained that Ravji was not the real owner of the land, but had purchased it and was holding it *benami* for his uncle. Ravji admitted that he had no interest in the land. On the 30th March, 1895, Ravji's uncle applied to be made a party to the suit, and was thereupon added as second plaintiff. The Subordinate Judge on the merits passed a decree awarding damages to the second plaintiff. The defendant appealed, and in appeal for the first time objected that Ravji (plaintiff No. 1) being only a *benamidár* could not bring the suit in his own name, and that the claim of the second plaintiff, or a large portion of it, was barred by limitation under section 22 of the Limitation Act (XV of 1877). The District Judge reversed the decree on the point of limitation and dismissed the suit. On second appeal to the High Court,

* Second Appeal, No. 688 of 1896.

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Held that the lower appellate Court was wrong in dismissing the suit, and that the appeal should be heard on the merits.

Per PARSONS, J.:—That any defect there might have been in the suit as originally filed by the first plaintiff, who was only *benamidár*, had been cured by the Court acting under section 27 of the Civil Procedure Code (Act XIV of 1882).

Bhola Pershad v. *Ram Lall*(1) and *Subodini Debi* v. *Cumar Ganada*(2) followed.

Per RANADE, J.:—The first plaintiff as *benami* purchaser had full right to bring the suit. If the true owner holds back, a decree against a *benamidár* owner would bind him as *res judicata*. The present suit was, therefore, properly instituted. The addition of the second plaintiff's name made no difference in the character of the suit. The defendant was estopped by his conduct in the previous proceedings, carried on between him and the first plaintiff for over seven years, from questioning his right to sue. The rights of the parties must, therefore, be dealt with on the footing that the first plaintiff had a right to bring this suit, and that he fully represented in his own person all the rights of the second plaintiff, for whom he acted as agent all along. The joinder of plaintiff No. 2 on 30th March, 1895, did not, therefore, deprive plaintiff No. 1 of his rights or create a new period of limitation as held by the lower Court of appeal.

SECOND appeal from the decision of S. Tagore, District Judge of Sátára, reversing the decree of the Subordinate Judge of Islámpur.

Suit for damages. The defendant Mahadev and his brother Balkrishna were owners of certain land which Balkrishna mortgaged. Subsequently in execution of a decree against Balkrishna his right, title and interest in the land were sold. The plaintiff Ravji became the purchaser, and then paid off the mortgage-debt and obtained possession of the property. The defendant Mahadev then sued Ravji for his half-share of the land, and obtained a decree for partition on payment of his portion of the mortgage-debt. The defendant paid the amount into Court in September, 1889, and partition was effected in September, 1890. The plaintiff Ravji objected to the partition as unfair, and a fresh partition was made in October, 1892.

On the 31st January, 1894, the plaintiff Ravji alone brought this suit against the defendant Mahadev for Rs. 1,695 as damages, alleging that after the first partition was made the defendant on

(1) I. L. R., 24 Cal., 34. (2) I. L. R., 14 Cal., 400.

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12th September, 1891, took possession of the crops of 1890 which had been raised by plaintiff. He complained also of the loss of the crops of 1891, putting the date of that loss as the 12th March, 1892, of loss by the defendant's obstructing him in cultivating the land in 1892, and of the loss of certain manure wrongfully taken by the defendant. The dates of these two last mentioned causes of action were the 27th October, 1892, and February, 1892, respectively.

The defendant answered (*inter alia*) that the plaintiff had no right to claim the standing crops, inasmuch as they were raised after the partition decree was passed; that he never obstructed the plaintiff in the cultivation of his share; and that he had not taken any manure belonging to the plaintiff.

In the course of the proceedings, the defendant ascertained that Ravji (plaintiff No. 1) had purchased the property *benami* for his uncle. He thereupon objected that the plaintiff had no right to sue in his own name. On the 30th March, 1895, Ravji's uncle applied to be made a party to the suit, and was made party plaintiff (plaintiff No. 2). Ravji (plaintiff No. 1) admitted that he had no interest in the property.

The Subordinate Judge passed a decree for the second plaintiff, awarding as damages Rs. 702.

The defendant appealed and raised the objection then for the first time that the suit was barred by limitation under section 22 of the Limitation Act (XV of 1877). The Judge allowed the objection and reversed the decree, holding that plaintiff No. 1 being only a *benamidár* could not sue in his own name, and that the second plaintiff was added as a party too late, *viz.*, more than three years after the date of the cause of action.

The plaintiffs filed a second appeal.

Balaji A. Bhagvat for the appellants (plaintiffs):—Though plaintiff No. 1 admittedly purchased the property *benami* for plaintiff No. 2, still he being the certified purchaser could maintain the suit—sections 316 and 317 of the Civil Procedure Code (Act XIV of 1882). A *benamidár* can bring a suit in his own name —*Nand Kishore Lal* v. *Ahmad Ata*[1]; *Shangara* v. *Krishnan*[2].

(1) I. L. R., 18 All., 69. (2) I. L. R., 15 Mad., 267.

No issue was raised in the first Court as to whether plaintiff No. 1 alone could institute the suit, or as to whether the claim was time-barred. It was only in appeal that the defendant raised the point of limitation. Even supposing that plaintiff No. 1 was not entitled to bring a suit in his own name, still the whole of our claim would not be time-barred. Our claim to damages for the year 1892 was not barred.

Further, no change was effected in the nature of the suit by joining plaintiff No. 2 at a late stage. After joining him the same suit continued at the instance of two plaintiffs instead of one.

Gangaram B. Rele for the respondent (defendant) :—A *benamidár* is not entitled to bring a suit in his own name—*Kalee Prosunno Bose* v. *Dinonath Bose*[1] ; *Hari Gobind Adhikari* v. *Akhoy Kumár*[2]. The suit as it was originally brought was not properly constituted, being brought by plaintiff No. 1 alone. Plaintiff No. 2, being the real owner, was the proper person to bring the suit, and when he was joined, the claim was clearly time-barred.

PARSONS, J.:—The District Judge has reversed the decree of the first Court and dismissed the plaintiffs' suit on the ground that plaintiff No. 1 was a *benami* purchaser for plaintiff No. 2, and plaintiff No. 2 not having been added as a party till the 30th March, 1895, the claim by him is time-barred. He has overlooked the fact that for the crops of 1892 the cause of action is said not to have arisen till the 27th October, 1892, so that that claim would not be time-barred.

The correctness of the rest of the decision depends upon whether the suit was rightly brought in the name of the first plaintiff. It appears that at the Court sale the right, title and interest of Balkrishna, who had mortgaged the property to the Belages, was purchased by the first plaintiff. He then sued the Belages and obtained a decree for redemption and was placed in possession on payment of the amount of the debt. He was then sued by the present defendant, who obtained a decree for partition on payment of his share of the debt. This suit is the result of what was done in the execution of that decree.

(1) 19 Cal. W. R., 435. (2) I. L. R., 16 Cal., 861.

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No objection was taken to the suit when it was filed by the plaintiff in January, 1894. It was not till the 30th March, 1895, that the defendant said the plaintiff had admitted in another suit that the land was not his, and asked that his suit be dismissed, upon which the second plaintiff asked to be joined as a co-plaintiff and was so joined; but the point of limitation was not raised until the case came up to the Court of appeal. The *benami* character of the purchase is admitted by the plaintiffs, so that there is no doubt that the second plaintiff is the owner of the property. Considering, however, that all the former transactions were in the name of the first plaintiff, I should hesitate before deciding that this suit was wrongly filed in his name.

The decisions as to whether a suit can be maintained in the name of the *benamidár* only are somewhat conflicting. In what is perhaps the latest reported case on the point, *Bhola Pershad* v. *Ram Lall*[1], it was held that a decree could be made in his favour, unless objection was taken, but I need not examine these cases here, since any defect that there may have been in the suit as originally filed has now been cured by the Court acting under section 27 of the Civil Procedure Code (Act XIV of 1882). In a similar case the Calcutta High Court has ruled that the original suit is continued and that the change of names does not affect the question of limitation. See *Subodini Debi* v. *Cumar Ganoda*[2]. Adopting that decision for the purposes of this suit I would reverse the decree of the lower appellate Court, and remand the appeal for disposal on the merits. Costs to be costs in the cause.

RANADE, J.:—In this case, appellant No. 1 (as sole plaintiff) instituted this suit on 31st January, 1894, to recover damages in respect of four items, the causes of action for which were stated to have accrued due on four different dates, for the crops of 1890 on 12th September, 1891, for the loss of crops of 1891 on 12th March, 892, for loss by obstruction caused in 1892 on 27th October, 1892 and for the value of certain manure in February, 1892.

Appellant No. 1 as auction-purchaser of the right, title and interest of one Balkrishna, brother of respondent, had paid off a mortgage-debt due by Balkrishna and respondent, and taken

(1) I. L. R., 24 Cal., 34. (2) I. L. R., 14 Cal., 400.

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possession of certain land. Later on, respondent obtained a decree for a partition of his half-share in the land, and in execution of this decree the first partition took place on 12th October, 1890, and this was set right by a second partition effected on 27th October, 1892. The respondent (original defendant) did not, in his written statement, question appellant No. 1's right to bring the suit in his own name, but later on he raised the objection, and thereupon appellant No. 2 was made a co-plaintiff on 30th March, 1895, on his own application, as being the party really interested in the field, and for whom appellant No. 1 had purchased at the auction, and had carried on the subsequent execution and partition proceedings. The Court of first instance disposed of the claim on its merits by awarding a part of the damages claimed to appellant No. 2.

In appeal, a preliminary objection under section 22 of the Limitation Act was raised by the present respondent, and the District Judge held that the objection was fatal to the claim of both plaintiffs, as plaintiff No. 1, being only a *benamidár*, could not bring the suit in his own name, and the claim of plaintiff No. 2, his uncle, was made more than three years after the cause of action accrued due, reckoning the date of the institution of the suit to be 31st March, 1895, when he was joined as a party. He held that the claim was barred under article 109.

Mr. Bhagvat on behalf of the appellants contended, chiefly on the authority of the ruling in *Nand Kishore Lal* v. *Ahmad Ata*[1] and *Shangara* v. *Krishnan*[2], that the lower Court was in error in holding that the appellant No. 1 as *benamidár* could not institute the suit in his own name. It was further contended that even accepting the view of the lower Court on this point to be correct, it was in error in holding that the claim in respect of all the four items was time-barred, seeing that the cause of action for the third item accrued due on 27th October, 1892, within three years from the date when appellant No. 2 was made a party.

As regards the first objection, I am of opinion that there was nothing irregular in the institution of the suit by appellant

(1) I. L. R., 18 All., 69. (2) I. L. R., 15 Mad., 267.

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No. 1. He was the certified purchaser. He obtained possession by paying off the mortgage-debt. Respondent sued him in the partition proceedings. Even in this suit he did not raise any objection to appellant No. 1's right to sue in his written statement. Under these circumstances appellant No. 1's admission later on that he was only a *benamidár* purchaser for his uncle, who was the real owner, did not affect the right under which he had carried on these proceedings for so many years, in his own name, at least as between him and the respondents. A *benamidár*, who is a certified purchaser, acquires certain rights under his certificate of sale, and among these rights is the right to recover possession of the land, and not even the true owner for whom he made the purchase can under section 317 question his right except in the way pointed out in the latter part of the section. The object of that section has been judicially declared to be to protect third parties who might deal with the certified purchaser against the claims of the undeclared or secret owner who put forward the certified purchaser as legal owner—*Bodh Sing* v. *Guneschunder Sen*[1], *Mor Joshi* v. *Muhammad Ibrahim*[2]. If the *benamidár* himself raises no objection, and admits the title of the true owner, or the owner obtains a transfer of possession, section 317 does not come in the way of the true owner asserting his right as against third parties or *vice versâ*—*Satapa* v. *Karbasapa*[3] and *Karamuddin* v. *Niamut Fatehma*[4], but all this implies the consent of the *benamidár*.

In *Kalee Prosunno Bose* v. *Dinonath Bose*[5] the Calcutta High Court did indeed express an opinion that if the certified purchaser is a *benamidár*, the name of the true owner should be joined as co-plaintiff, and that the omission to do so would justify the dismissal of the suit. In a later case—*Hari Gobind Adhikari* v. *Akhoy Kumar*[6]—it went much further, and held that a *benamidár* could not maintain a suit for the recovery of the land bought by him. The Allahabad High Court in its judgment in *Nand Kishore Lal* v. *Ahmad Ata* has, however, carefully examined all the authorities on the subject, and has shown good reasons for its

(1) 19 Cal. W. R., 356.
(2) 10 Bom. H. C. Rep., 344.
(3) 7 Bom. H. C. Rep., 21 (A. C. J.)
(4) I. L. R., 19 Cal., 199.
(5) 19 Cal. W. R., 435.
(6) I. L. R., 16 Cal., 364.

dissent from the Calcutta ruling. The Madras High Court has adopted a similar view in *Shangara* v. *Krishnan*.

We are inclined to agree with the Allahabad and Madras High Courts, and hold that a *benami* certified purchaser can sue in his own name even when the true owner's name is disclosed. In *Gopeekrist Gosain* v. *Gungapersaud Gosain*[1] and *Mussumat Bukuns Kowar* v. *Lalla Buhooree Lall*[2] this whole subject has been examined by their Lordships of the Privy Council, and the theory that *benami* transactions are presumably fraudulent has been shown to be not correct.

This review of the authorities shows clearly that appellant No. 1 as *benami* purchaser had full right to bring the suit. If the true owner holds back, a decree against the *benamidár* owner would bind him as *res judicata*. The present suit was, therefore, properly instituted. The addition of appellant No. 2's name made no difference in the character of the suit. The respondent was estopped by his conduct in the previous proceedings carried on between him and appellant No. 1 for over seven years from questioning his right to sue. The rights of the parties must, therefore, be dealt with on the footing that the appellant No. 1 had a right to bring this suit, and that he fully represented in his own person all the rights of appellant No. 2 for whom he acted as agent all along. The joinder of appellant No. 2 on 30th March, 1895, did not, therefore, deprive appellant No. 1 of his rights, or create a new period of limitation as held by the lower Court of appeal.

We may note also that even if the District Judge's view on the first point be accepted as correct, he was plainly in error in rejecting the claim for Rs. 194 which is alleged to have become due on 27th October, 1892, and part of which was allowed by the Court of first instance.

For these reasons, we reverse the decree of the lower Court and remand the case for a decision on the merits.

Decree reversed and case remanded.

(1) 6 M. I. A., 53. (2) 14 M. I. A., 496.