Tyabji restored. The respondents will pay the costs of the appeal.

1907.

KESSOWJI ISSUR v. G. I. P. RAILWAY COMPANY.

Appeal allowed.

Solicitors for the appellant—*Messrs. Payne & Lattey.*

Solicitors for the respondents—*Messrs. White, Borrett & Co.*

J. V. W.

APPELLATE CIVIL.

Before Sir Lawrence Jenkins, K.C.I.E., Chief Justice, and Mr. Justice Beaman.

KRISHNAPPA BIN VENKRADDI (ORIGINAL DEFENDANT 2), APPELLANT, *v.* SHIVAPPA BIN TIMARADDI (ORIGINAL PLAINTIFF), RESPONDENT.*

1907. *March* 12.

Transfer of Property Act (IV of 1882), section 52—Civil Procedure Code (Act XIV of 1882)—Contentious suit—Active prosecution—Non-service of the summons on the defendant—Transfer of property by the defendant—Lis pendens.

Section 52 of the Transfer of Property Act (IV of 1882) imposes two conditions—(*a*) the existence of a contentious suit and (*b*) that the transfer should be during its active prosecution in a Court of the kind described in the section.

Semble: Every real suit (as distinguished from a collusive one), to which the Civil Procedure Code (Act XIV of 1882) applies, is *primâ facie* contentious.

According to the Civil Procedure Code the essentials of a suit are—(1) opposing parties, (2) a subject in dispute, (3) a cause of action, and (4) a demand of relief.

If there is no inaction on the plaintiff's part, the suit would be contentious, notwithstanding the fact that the service of the summons could not be effected on the defendant.

A suit cannot be said to be non-contentious merely because the decree therein is passed *ex parte*.

Annamalai Chettiar v. *Malayandi Appaya Naik*(1) followed. *Upendra Chandra Singh* v. *Mohri Lal Marwari*(2) not followed.

The defendant having transferred his property to another during the active prosecution of the suit but before the service of the summons,

Held, that the doctrine of *lis pendens* applied.

* Second Appeal No. 141 of 1906.

(1) (1906) 29 Mad. 426. (2) (1904) 31 Cal. 745.

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Radhasyam Mohapattra v. *Sibu Panda* (1), *Abboy* v. *Annamalai* (2), *Parsotam Saran* v. *Sanehi Lal* (3), *Upendra Chandra Singh* v. *Mohri Lal Marwari*(4), not followed.

Jogendra Chunder Ghose v. *Fulkumari Dassi*(5) and *Annamalai Chettiar* v. *Malayandi Appaya Naik*(6) approved.

Per BEAMAN, *J.* :—I am clearly of opinion that from the moment a suit of any sort whatever, except only collusive suits, is filed, it is potentially contentious. So-called friendly suits, I think, certainly are. For the purpose then of conditioning the rule of *lis pendens*, I would say that the filing of any, but a collusive suit, is enough.

SECOND appeal from the decision of T. Walker, District Judge of Belgaum, confirming the decree of V. D. Joglekar, Subordinate Judge of Saundatti.

The facts were as follows :—

The property in dispute originally belonged to one Ningappa bin Parappa, defendant 1. He mortgaged it for Rs. 99 to Timaraddi, brother of Krishnappa bin Venkraddi, defendant 2, by a deed of mortgage dated the 24th August 1896. On the 18th June 1900 Timaraddi brought a suit, No. 460 of 1900, on his mortgage and on the 14th July 1900 the defendant's summons was returned unserved for want of a pointer-out. Four days previous, that is, on the 10th July, Timaraddi applied that the summons might be sent to another village, Hanchinal, and on the 12th July the bailiff reported that Ningappa saw him and ran away. Eventually substituted service was effected on the 4th August 1900. Before the substituted service was effected, that is, on the 17th July 1900, Ningappa sold the property to the plaintiff Shivappa bin Timaraddi Gangal for Rs. 400 under a registered deed and put him in possession. Subsequently an *ex parte* decree was passed against Ningappa in Suit No. 460 of 1900 and in execution-sale the property was purchased by Krishnappa bin Venkraddi, defendant 2, who obtained possession through the Court on the 23rd April 1903. In the year 1904 the plaintiff brought the present suit to recover possession of the property on the strength of his registered sale-deed dated the 17th July 1900.

(1) (1888) 15 Cal. 647.
(2) (1888) 12 Mad. 180.
(3) (1899) 21 All. 408.
(4) (1904) 31 Cal. 745.
(5) (1899) 27 Cal. 77.
(6) (1906) 29 Mad. 426.

Defendant 1 admitted the sale-deed and did not dispute the plaintiff's claim for possession.

Defendant 2 contended that the sale-deed relied on by the plaintiff was fraudulent and not binding on him, that the property was mortgaged by defendant 1 to Timaraddi, brother of defendant 2, that the plaintiff's sale-deed was executed after the mortgagee Timaraddi had instituted Suit No. 460 of 1900 to recover the amount of his mortgage, that the defendant purchased the property on the 6th October 1902 in execution of the decree on the mortgage and that he obtained possession of the property through the Court on the 23rd April 1903.

The Subordinate Judge found *inter alia* that the purchase by defendant 2 was not binding on the plaintiff on the following ground:—

Defendant 2 does not show that the mortgage-deed on which the original Suit No. 460 was brought was a registered document. As it was for Rs. 99 I presume it was not registered. It is not shown that the summons in the Suit No. 460 was served on the defendant 1 before the date of the sale-deed relied on by the plaintiff so as to make the doctrine of *lis pendens* apply to the case as held in I. L. R. XV Cal. 651. I therefore cannot hold the Court-sale is binding on the plaintiff.

He therefore allowed the claim.

On appeal by defendant 2 the District Judge confirmed the decree.

The following is an extract from his judgment:—

In the meantime Ningappa sold the property to plaintiff by the registered sale-deed of 17th July 1900. The question is, whether under section 52 of the Transfer of Property Act any active prosecution of a contentious suit was then going on. It is clear that plaintiff cannot be held to have had notice of Timaraddi's unregistered mortgage. It is also clear from the following cases, marginally noted, that Timaraddi's suit did not become contentious till the service of summons on Ningappa, which was not effected till 4th August 1900. Mr. Ajrekar urges that Ningappa was evading service, and that as he ran away from the bailiff on the 12th July 1900, he must have known of the suit and the doctrine of *lis pendens* applies. I feel unable, however, to go beyond the decided cases. It is conceivable, though perhaps not very likely, that Ningappa was running away from some other supposed creditor. I find that the doctrine of *lis pendens* applied from 4th August 1900, that plaint-

(1) I. L. R. 15 Cal. 647.
(2) I. L. R. 21 All. 408.
(3) I. L. R. 12 Mad. 180.
(4) I. L. R. 27 Cal. 77.

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iff's sale-deed of 17th July 1900 is not thereby affected, and that his registered sale-deed is entitled to priority against Timaraddi's unregistered mortgage which was unaccompanied by possession and by the purchase of defendant 2 at the Court-sale.

Defendant 2 preferred a second appeal.

G. S. Mulgaumkar appeared for the appellant (defendant 2) :—We submit that section 52 of the Transfer of Property Act does apply. The suit was both contentious and actively prosecuted. Besides this, the facts show that the transfer to the plaintiff was not *bonâ fide*. When a suit is once launched it becomes *ipso facto* contentious unless the circumstances show that it is a collusive one. The fact that the present suit was decided *ex parte* does not make it the less contentious. The analogy of a "friendly suit" does not apply. Such a suit is strictly speaking no suit, because the object therein is merely to obtain the Court's order without which any further action on the part of the parties to it is either impossible or restricted in connection with the subject matter thereof. A "friendly suit" cannot therefore afford a safe guide to determine the meaning of the term "contentious."

The cases which the Judge has cited in support of his view that the suit was not contentious before the service of the summons on the defendant have been dissented from in *Jogendra Chunder Ghose* v. *Fulkumari Dassi*[1], *Upendra Chandra Singh* v. *Mohri Lal Marwari*[2] and *Annamalai Chettiar* v. *Malayandi Appaya Naik*[3]. See also *Bellamy* v. *Sabine*[4]. The suit was actively prosecuted. There was no negligence on the part of the plaintiff in serving the summons on the defendant. The circumstances clearly establish that the defendant evaded service.

K. H. Kelkar appeared for the respondent (plaintiff) :—The suit was not contentious as the defendant was not served with the summons. Till he is so served the suit is neither contentious nor actively prosecuted. *Radhasyam Mohapattra* v. *Sibu Panda*[5]; *Parsotam Saran* v. *Sanehi Lal*[6] support our conten-

(1) (1839) 27 Cal. 77.
(2) (1904) 31 Cal. 745.
(3) (1906) 29 Mad. 426.
(4) (1857) 1 De G. & J. 566.
(5) (1888) 15 Cal. 647.
(6) (1899) 21 All. 408.

tion. The very fact that the suit was decided *ex parte* clearly shows that it was not defended and there was no contention. No doubt, the ruling in *Jogendra Chunder Ghose* v. *Fulkumari Dassi*[1] does not support our contention. But the later ruling in *Upendra Chandra Singh* v. *Mohri Lal Marwari*[2] shows that suits in which there are *ex parte* decrees cannot be called contentious. Besides, the delay in the service of the summons on the defendant shows that the suit was not actively prosecuted.

Mulgaumkar, in reply.

JENKINS, C. J.:—The only question that arises on this appeal is, whether by a sale-deed of the 17th July 1900 immoveable property was transferred to the plaintiff by one Ningappa during the active prosecution of a contentious suit, so as to attract the operation of section 52 of the Transfer of Property Act. The suit, No. 460 of 1900, was filed by one Timaraddi on the 18th June 1900 against Ningappa, the present plaintiff's vendor. The evidence according to the District Judge shows "that on the 14th July 1900 the first summons was returned unserved for want of a pointer-out; that on the 10th July Timaraddi applied that the summons might be served on a different village Hanchinal, and that on the 12th July the bailiff reported that Ningappa saw him and ran away. Eventually substituted service was effected on the 4th August 1900."

It will thus be seen that the transfer was after the institution of the suit, but before service of the summons, and on this ground the learned District Judge held that at the date of the transfer the suit had not become contentious.

The rule of *lis pendens* in this Presidency is statutory and rests on section 52 of the Transfer of Property Act which runs as follows:—

"During the active prosecution in any Court having authority in British India, or established beyond the limits of British India by the Governor General in Council, of a contentious suit or proceeding in which any right to immoveable property is

(1) (1899) 27 Cal. 77.

(2) (1904) 31 Cal. 745.

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directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose."

So the section imposes two conditions, (*a*) the existence of a contentious suit, and (*b*) that the transfer should be during its active prosecution in a Court of the kind described in the section.

Speaking generally I should be disposed to say that every real suit, to which the Civil Procedure Code applies, is *prima facie* contentious; for if we turn to the Code, we find as the essentials of a suit opposing parties, a subject in dispute, a cause of action, and a demand of relief.

The degree or absence of resistance on the part of the defendant before the Court can make no difference in this respect, and so I hesitate to accept the suggestion that the expression contentious suit was used to exclude from the section friendly suits commonly so called. And I doubt whether the use of the word contentious in connection with probate proceedings furnishes us with a safe clue to its meaning in this section.

Still the word must have some value, and on the whole I am inclined to think that it was used to introduce into the section the condition that the "suit must be real and not collusive." (See *Culpepper v. Aston*[1], and Sugden on Vendors and Purchasers, 14th Edn., p. 758). The word is apt for this purpose, and its use in this meaning brings the section into conformity with the law as established on principle.

But it is not necessary to express any certain opinion on this point, for, without that there are other grounds on which I feel compelled to dissent from the conclusion at which the District Court has arrived.

(1) (1682) 2 Ch. Ca., p. 116.

There are cases which support the view of the District Judge and they are cited by him.

The earliest case is *Radhasyam Mohapattra* v. *Sibu Panda* (1), where it was said "as a matter of fact there was no contentious suit or proceeding in existence until the summons to the suit brought by the defendant No. 1 against the defendant No. 2 was served." But no reason was given for this view. *Abboy* v. *Annamalai* (2) and *Parsotam Saran* v. *Sanehi Lal* (3) follow this decision without throwing any light on the view propounded.

But in *Jogendra Chunder Ghose* v. *Fulkumari Dassi* (4), Maclean, C. J., and Banerjee, J., clearly indicated that they were not prepared to accept as correct the view that there could not be a contentious suit or proceedings until the service of summons on defendant, and they, in fact, decided that section 52 of the Transfer of Property Act applied, though the summons had not been served.

I find myself in complete accord with this conclusion: whatever the force of the word *contentious* may be, I find it impossible to think that it indicates a quality that cannot belong to a suit until service of summons, or that a suit in other respects contentious is not so, because the plaintiff may have been unable to serve the summons on the defendant.

But then it is said that the suit was not contentious because the decree was passed *ex parte* and *Upendra Chandra Singh* v. *Mohri Lal Marwari* (5) is cited in support of this. But if it was intended in this case to lay down without qualification the proposition for which it is cited, I cannot agree with it; I prefer the decision in *Annamalai Chettiar* v. *Malayandi Appaya Naik* (6), which is based on reasoning that clearly refutes the proposition for which the respondent contends.

Was then the transfer during the active prosecution of the suit? On the findings of the District Judge I think it was; there was no inaction on the plaintiff's part.

(1) (1888) 15 Cal. 647 at p. 651.
(2) (1888) 12 Mad. 180.
(3) (1899) 21 All. 408.
(4) (1899) 27 Cal. 77.
(5) (1904) 31 Cal. 745.
(6) (1906) 29 Mad. 426.

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The hardship to the purchaser cannot affect the decision of the case. I think, however, it may be worthy of consideration whether the risk of hardship could not be diminished by requiring a *lis pendens* to be registered before it can bind transferees for value. The decree of the District Court must be reversed and the suit dismissed against defendant 2 with costs throughout.

BEAMAN, J.—This is a question of *lis pendens*, under section 52 of the Transfer of Property Act. It appears that the plaintiff-appellant filed a suit on 18th June 1900, that he made two attempts to serve the defendant with the summons, the last on the 12th July 1900, that the defendant, though seen by the bailiff who was attempting to effect the service, ran away and successfully evaded it until the 4th of August 1900, that on the 17th July 1900, and therefore before he was actually served with the summons, the defendant sold the property to the respondent. The lower appellate Court held upon the authority of cases, which will presently be noticed, that the suit was not contentious until the defendant had been served, and therefore that there was no *lis pendens*, and section 52 did not apply.

The question is, whether in these circumstances the sale to the respondent was forbidden by section 52 of the Transfer of Property Act.

The earliest case I have been able to find is *Kailas Chandra Ghose* v. *Fulchand Jaharri* [1]. There Couch, C. J., said "practically there is no difference between *lis pendens* and having notice of the suit." Although there might be some theoretical objection to that rough general identification of the doctrines of notice and *lis pendens*, yet where the parties on both sides were acting in perfect good faith, the proposition might pass without occasioning any serious practical difficulty.

It is to be observed, however, that the difficulties, such as they are which now attend the subject, have arisen upon the wording of section 52. After giving all the cases to which our attention has been drawn, and upon some of which the conclusion of the

(1) (1871) 8 Ben. L. R. 474.

lower appellate Court has been founded, the best consideration, I doubt whether we are in perfect agreement with any of them.

In *Radhasyam Mohapattra* v. *Sibu Panda* [1], it was first I think laid down that to make a suit contentious within the meaning of section 52 the summons must have been served on the defendant; and that until that was done, no suit could be "contentious."

A year later the Madras High Court held in *Abboy* v. *Annamalai* [2], that as soon as the filing of the plaint is brought to the notice of the defendant, the proceeding becomes contentious, and any alienation subsequent to that is subject to the doctrine of *lis pendens*. In this judgment Collins, C. J., adopted the reasoning of Couch, C. J.

Both these cases were followed in *Parsotam Saran* v. *Sanehi Lal* [3]. In delivering judgment Strachey, C. J., merely contented himself with saying that that Bench was prepared to follow those rulings "to which there is nothing contrary in any of the decisions of this Court."

In *Jogendra Chunder Ghose* v. *Fulkumari Dassi* [4], Maclean, C. J., said "It is said upon the authority of the case of *Radhasyam Mohapattra* v. *Sibu Panda* [1], that a suit does not become contentious, until the summons has been served upon the opposite party."

Thus we are introduced to the English rule, that *lis pendens* did not begin till a subpœna had been served. *Bellamy* v. *Sabine* [5].

In *Krishna Kamini Debi* v. *Dino Moni Chowdhurani* [6], a Bench consisting of Prinsep and Harrington, JJ., distinguished the last mentioned case, and laid it down that a suit did not become contentious till the written statement had been filed.

And in *Upendra Chandra Singh* v. *Mohri Lal Marwari* [7], Ghose, J., while doubting whether the rule had not been laid

(1) (1888) 15 Cal. 647.
(2) (1888) 12 Mad. 180.
(3) (1899) 21 All. 408.
(4) (1899) 27 Cal. 77 at pp. 83, 84.
(5) (1857) 1 De G. & J. 566.
(6) (1904) 31 Cal. 658.
(7) (1904) 31 Cal. 745 at p. 752.

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down a little too widely in some of the foregoing cases said, "The section does not say 'a suit' but a 'contentious suit,' so that the rule of law laid down in the section is not applicable to any suit, if there is only an active prosecution thereof."

In *Annamalai* v. *Malayandi* (1), a Full Bench of the Madras High Court held that a suit was for the purposes of section 52 not the less a contentious suit, because it was subsequently compromised, and, as was done by Prinsep, J., in *Krishna Kamini Debi* v. *Dino Mony Chowdhurani* (2), turned to the Probate Court for a definition of the term contentious. It was said that the term contentious is used in section 52 of the Transfer of Property Act in the sense in which it is used in probate practice, and means the opposite of common form or voluntary business.

It will plainly appear from a consideration of these cases that there has been, as Maclean, C. J., observed in *Jogendra Chunder Ghose* v. *Dassi Fulkumari* (3), some confusion of thought as to the precise relative bearing upon the point of time at which *lis pendens* attaches, of the terms "contentious" and "during the active prosecution." The former qualifies the whole doctrine; that is to say, that there can be no *lis pendens* without a contentious suit. The latter subject to that qualification defines the point of time at which the rule comes into operation. While, therefore, it certainly is necessary to have a clear understanding of what a "contentious" suit is, that is separable from the understanding of what is meant by the active prosecution of it. The former conditions the existence of *lis pendens*, the latter fixes the commencement and continuance of its existence.

I find myself unable to entirely agree with any of the cases I have cited. That which comes nearest to an accurate and correct statement of all that is involved in and required for the answer of the question now before us, appears to me to be the judgment of Ghose, J., in *Upendra Chandra Singh* v. *Mohri Lal Marwari* (4).

From the other cases we obtain the following definitions of a contentious suit: (1) A contentious suit is a suit in which the

(1) (1906) 29 Mad. 426.
(2) (1904) 31 Cal. 658.
(3) (1899) 27 Cal. 77.
(4) (1904) 31 Cal. 745 at p. 752.

defendant has notice that a plaint has been filed, per Couch, C. J., in *Kailas Chandra Ghose* v. *Fulchand Jaharri* [1], and per Collins, C. J., in *Abboy* v. *Annamalai* [2]. (2) A contentious suit is a suit in which summons has been served on the defendant, per Beverley and Norris, JJ., in *Radhasyam Mohapattra* v. *Sibu Panda* [3], and Strachey, C. J., in *Parsotam Saran* v. *Sanehi Lal* [4]. (3) When the event of the suit is known and proved to be contentious, per Meclean, C. J., in *Jogendra Chunder Ghose* v. *Fulkumari Dassai* [5]. (4) The English Rule that to make a suit contentious the subpœna must have been served [6]. (5) A suit cannot be contentious until the defendant has put in a written statement, per Prinsep and Harington, JJ., in *Krishna Kamini Debi* v. *Dino Mony Chowdhurani* [7]. (6) A contentious suit is the opposite of what in Probate are common form or voluntary proceedings [8].

With the greatest respect to the eminent Judges responsible for these definitions I gravely doubt whether any of them are correct. Some of them are manifestly and demonstrably bad. As for example, 1, that the contentiousness or otherwise of a suit is to be judged by the event, or 2, determined by the defendant putting in a written statement. Suppose that a defendant, who has been duly served with notice and is perfectly aware of the active prosecution of a suit against him, disposes of all the property, which is the subject-matter of that suit, and having done so comes into Court and announces that he has no contention whatever to advance, looking only to the event that would not be a contentious suit, but could it be said that the alienations did not fall within the prohibitions of section 52? Fixing the contentiousness or otherwise for the purpose of section 52 of any suit upon the fact of the defendant having put in a written statement can be referred to no sound principle and has only the authority of a single recent case, which was almost immediately doubted.

(1) (1871) 8 Ben. L. R. 474.
(2) (1888) 12 Mad. 182.
(3) (1888) 15 Cal. 647 at p. 651.
(4) (1899) 21 All. 408.
(5) (1899) 27 Cal. 77.
(6) *Bellamy* v. *Sabine* (1857) 1 De G. & J. 566 (586).
(7) (1904) 31 Cal. 658 at p. 662.
(8) *Annamalai Chettiar* v. *Malayandi Appaya Naik* (1906) 29 Mad. 426.

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Nor am I satisfied that when the term 'contentious' was used in section 52 of the Transfer of Property Act, it was intended to have precisely the meaning it has in section 253A of the Indian Succession Act or in English probate proceedings.

I am clearly of opinion that from the moment a suit of any sort whatever, except only collusive suits, is filed, it is potentially contentious. So called friendly suits, I think certainly are. For the purpose then of conditioning the rule of *lis pendens* I would say that the filing of any but a collusive suit, is enough. But for the purpose of bringing the rule into operation, there must be an active prosecution of that suit. Now what is or what is not an active prosecution, must be from the very nature of the terms employed always in some degree a question of fact.

To say that although a suit is in its nature contentious it is not actively prosecuted until the defendant has been served with notice, is, in my opinion, going too far. It would be going too far in the other direction to say that the mere filing of the plaint was enough in itself to attract the rule of *lis pendens*.

The most convenient practical rule in all cases where there was no delay on the part of the plaintiff, and no evasion on the part of the defendant, would no doubt be that suggested in *Radhasyam Mohapattra* v. *Sibu Pandu*[1]. But the facts of the case before us show how very unsafe it is to attempt to improve upon or stereotype the advisedly general language of an enactment, thereby introducing what may prove to be a new and altogether judge-made piece of law. Even in the phrase I have used a few sentences back "where there was no delay, etc.," the use of additional words intended to be words of definition, merely opens the door to fresh argument. For, opinions may always differ as to what constitutes delay. And that is why, in my opinion, the construction to be put upon the words "during the active prosecution" should be left to the interpretation of the Courts with reference to the particular facts of each case as it comes before them.

Applying the strict rule to which the Calcutta Judges have so often inclined and which has still the authority of the Allahabad

(1) (1888) 15 Cal. 647.

High Court, would in the present case, and might constantly in other cases, put a premium on dishonesty.

However diligently the plaintiff might be prosecuting his suit, however contentious that suit might really be, there is no guarantee, that a defendant, who wished to defeat the plaintiff's just claim, might not successfully evade service of summons until he had negotiated the sale of all the property upon which the plaintiff's claim attached. That is in effect what, if we understand the Courts below aright, they find, has happened in this case.

If we are correct in this, then by applying the test of notice which had the approval of two eminent Chief Justices, there would be no difficulty in deciding that while the plaintiff was actively prosecuting a contentious suit, no counter equity had arisen on the other side owing to neither the defendant nor his vendee having in fact been aware of the plaintiff's proceedings. I think that in this case there cannot be the least doubt but that there was a contentious suit, and I think there can be no doubt but that the plaintiff was actively prosecuting it to the best of his ability and to the knowledge of the defendant. Therefore the impugned alienation falls within the prohibition of section 52, Transfer of Property Act.

Decree reversed.

G. B. R.

APPELLATE CIVIL.

Before Sir Lawrence Jenkins, K.C.I.E., Chief Justice, and Mr. Justice Beaman.

SIDLINGAPPA BIN GANESHAPPA AND OTHERS (ORIGINAL PLAINTIFFS), APPELLANTS, *v.* HIRASA BIN TUKASA (ORIGINAL DEFENDANT 2), RESPONDENT.*

1907. *March* 19.

Benami sale—Purchaser from benamidar—Attachment in execution of a money decree against the original owner—Raising of the attachment at the instance of the purchaser from benamidar—Suit by the purchaser to recover possession—Original owner setting up his own fraud.

H., the owner of certain property, executed a *benami* sale-deed and the *benamidar* sold the property to the plaintiffs' father. The property was after-

* Second appeal No. 286 of 1906.