

land which she had either rightly or wrongly sold on the false pretence that the land sued for was not that land. We think it would be unfair to charge the estate with the burthen, or to make the adopted son suffer for an act which had nothing whatever to do with the estate, and which was not done for his benefit, but for that of his adoptive mother, Juggdessuree.

We, therefore, dismiss this special appeal with costs.

The 13th May 1865.

Present :

The Hon'ble E. Jackson and F. A. Glover,
Judges.

Benamsee sale—Bona fide purchaser—Subsequent sale by heir of benameedar—Sale by minor.

Case No. 3687 of 1864.

Special Appeal from a decision passed by the Officiating Judge of Dacca, dated the 29th September 1864, reversing a decision passed by the Principal Sudder Ameen of that District, dated the 23rd May 1864.

Mr. L. Rennie (Plaintiff), *Appellant*,

versus

Gunga Narain Chowdry (Defendant),
Respondent.

Baboos Mohendro Lal Shome and Debendro Narain Bose for Appellant.

Baboo Onocool Chunder Mookerjee for Respondent.

A vendee, who purchases for valuable consideration and without notice of *benamsee* from the ostensible owner of the property held by him under an apparently good title, will be protected from subsequent acts of the owner or his heir, both of whom were parties to the fraud; and his purchase will hold good against any subsequent sale made by them.

A purchase from a minor is not *ipso facto* invalid.

THE plaintiff in this suit (special appellant before us) sued for confirmation of his possession in an 8-anna share of certain lands by cancelment of a summary order passed by the Collector, by which the special respondent's name was entered in the mutation register as owner of a 10-annas share of those lands. The relief sought extended of course only to the 8-annas share. The registry of the remaining 2-annas share in the name of the special respondent was not contested.

It appears from the record, and it will be as well to explain the state of matters between the parties *in extenso*, that the entire

estate, 16 annas that is, was originally held by one Bydnath. He had two sons, Kaleenath and Golucknath; the former left a widow named Shunkuree, who, on her husband's death, remained in joint possession with Golucknath, in whose name the entire estate was registered in the Collector's Books.

These two proprietors, Shunkuree and Golucknath, gave a 4-annas share of the estate to Bhyrubee Debia, Golucknath's mother; and Golucknath sold his remaining interest, *viz.*, 6 annas, to Ram Mohun Kandoo, who had his name registered for that share as a separate talook, bearing a jumma of 68 rupees.

Shunkuree gave 2 annas of her share to Manoda, the brother of her co-sharer, Golucknath, and sold her remaining interest, *viz.*, 4 annas, to Ooma Churn and Doorga Churn, her husband and brother-in-law.

Bhyrubee, Golucknath's mother, gave the 4-annas share, which had been given to her by her son and Shunkuree, to Shib Chunder, who sold it to Manoda.

So that Manoda became seized of a 6-annas share: 4 annas by purchase and 2 annas by gift.

Of this 6 annas, the special appellant alleges that he purchased 5 annas on the 7th of Jeit 1264 B. S. He also bought from Ram Mohun Kandoo 3 annas of his share of 6 annas, thus becoming possessed in all of an 8-annas share in the estate.

He also, as it is alleged, got *ijaras* of 5 annas more; but this is not a point that requires consideration in this case.

Special appellant goes on to say that the special respondent, on the allegation that Huro Soonduree, widow of Golucknath, had sold to him a 10 annas share of the property, effected registration of his name in the Collector's Book, the special appellant's objection notwithstanding; and it is this registration, at least so far as regards the 8-annas share purchased by him, that the plaintiff sued to set beside.

Special respondent's story is that Golucknath owned the entire 16 annas of the estate; that he sold a 6-annas share to Ram Mohun Kandoo; and in order to save the remaining 10 annas, which had been attached in execution of decree, caused his mother, Bhyrubee, and his brother's widow, Shunkuree, to file objections to the sale, the one for 4 annas, and the other for 6 annas, on the ground that the property was not Golucknath's, but their own. This fraud succeeded, and the shares were released from attachment.

The special respondent admits all the alienations set forth on the record, but avers that they were all *benamée* and fictitious sales, and that Golucknath was always the real owner of the property which, on his death, went to his widow Huro Soonduree, who in her turn sold it to special respondent.

We have thought it right to go into the pleadings somewhat in detail, in order to a correct understanding of the complicated questions involved.

The Court of first instance decreed the plaintiff's (special appellant's) claim to the 8-annas share, on the ground that his *bond fide* purchase was proved, and that, whether *benamée* or not, the vendors were in possession of the property sold at the time of the transfer.

But the Judge reversed this order, holding that all the prior sales were *benamée* and fictitious, and that the real owner had sold the property to the special respondent. He did not make any order regarding the 3 annas alleged to have been purchased from Ram Mohun Kandoo, and which special respondent did not claim.

It is urged in special appeal that the special appellant, being a *bond fide* purchaser for a valuable consideration without notice, cannot be affected by any subsequent sale of the property effected by the heir of the *benaméedars*.

We think that this objection must be allowed. The Judge has found, as a fact, that all the different transfers by Golucknath were fictitious; that in reality nothing passed under those sales; and that Golucknath was the owner of the property up to the time of his death. This is a finding of fact with which we cannot interfere; nor are we disposed to think that, under the circumstances disclosed in the record, the Judge was not fully justified in coming to such a conclusion. But in deciding on the fraudulent nature of these conveyances, he has altogether omitted to consider the special appellant's position. The special respondent has been allowed to retain possession of his purchase on the ground that it was *bond fide*, and that his vendor, notwithstanding that she was a party to the fraudulent transfer above alluded to, was at the time of sale the real owner; but he has altogether overlooked that the special appellant might have acted equally *bond fide*, and have supposed all along that he was purchasing from the real owners.

We are of opinion that, if a vendee purchases for a valuable consideration, and without notice of the *benamée* from one who, in the eyes of the world, is the absolute owner of a property, and who holds that property to all appearances under a good and sufficient title, he would be protected from the subsequent acts of the real owner or of his heir, both of whom were parties to the fraud; and that his purchase would hold good against any subsequent sale made by them. The defect in the title was a latent one, which the special appellant could not, by any reasonable enquiry, have discovered; and the party who assisted in deceiving him cannot now take advantage of his own fraud, and sell to another what has already been made over for value to the original purchaser.

The Judge alludes to the fact that the special appellant purchased from a minor, as if that fact told against his claim. It is urged by the special respondent that the Judge thereby intended to throw some doubt on the validity of the plaintiff's purchase; but a purchase from a minor is not *ipso facto* invalid; and, therefore, if this was in the learned Judge's mind, he is in error here also.

The case must, therefore, be remanded to the Judge to find whether the special appellant did or did not buy the property *bond fide* for a valuable consideration, without notice of the *benamée*; if this point be found in his favour, we think that he would have a good title against the special respondent.

With regard to the 3 annas share alleged to have been brought by the special appellant from Ram Mohun Kandoo, we do not see that the Judge has considered the point. The special respondent admits that Ram Mohun was the purchaser of a 6-annas share from Golucknath, so that there would seem to be no reason why the special appellant should not in any case recover so much of his claim.

The Judge will take up this point also on the remand, and pass a fresh decision on the entire claim with reference to the above remarks.

Costs will follow the result.