

The 27th April 1874.

Present :

The Hon'ble Sir Richard Couch, *Kt.*, Chief Justice, and the Hon'ble W. Ainslie, Judge.

Benamedar—Beneficiary Owner—Purchaser's Liabilities.

Case No. 1599 of 1873.

Special Appeal from a decision passed by the Subordinate Judge of Sylhet, dated the 4th April 1873, affirming a decision of the Moonsiff of Parkul, dated the 16th December 1872.

Hakeem Meah (Plaintiff), *Appellant*,

versus

Beejoy Patnee and others (Defendants),
Respondents.

Baboo Ashoolosh Dhur for Appellant.

Baboo Bharut Chunder Dutt for Respondents.

Where there is a person in possession of an estate other than the nominal owner, *i. e.*, the person in whose name the title-deed is, a purchaser, although he may be a purchaser for value, is bound to inquire what is the nature of his possession. If he does not think fit to do so, he takes subject to the rights of the person in possession.

Couch, C.J.—THE plaintiff's case was that the lands, the subject of the suit, were included in the pottah which was in the name of Rajah Rajendro Singh, and that the Rajah sold the lands of Mattare Roy and Dumai Roy, and that subsequently they sold to the plaintiffs.

The defendants' case was that they were the real owners, and that these two persons were only benamedars, the transfer made from Rajah Rajendro Singh to them being the transfer only of the nominal or benamee right. The facts have been found by both the lower Courts in favour of the defendants upon this point. But the Subordinate Judge, at the end of his judgment, says: "The plaintiffs assert that they made the purchase in good faith; but, taking this to be true, the Court cannot make a third party a loser, when a person has purchased in good faith the right of such third party from others who are not the owners."

We cannot say that this is good law; but, upon the facts as found, we think the plaintiffs have no right to recover the property. It is found by the Subordinate Judge that

the defendants had been the rightful owners before the grant of the pottah in the name of Rajah Rajendro Singh, and had been in possession up to the time of the suit. In another place, he says that "the property was in the ostensible names of Dumai and Mattare, but the property as before was in the possession of the defendants, and was owned by them." So that we have here a case where the benamedars have no possession, and the property is in the possession of the persons from whom they were benamedars. In such a case the person purchasing from the benamedars was bound to inquire what was the interest of the persons who were in possession. It is a question of equity, whether the person buying from the benamedars can be considered to have had actual or constructive notice that the benamedars were not the real owners, and that the purchase was made simply in their names for the other persons.

It was on this principle that I decided a case which is reported in 6 Bombay High Court Reports, p. 59, where the purchase had been made from the person who was the nominal owner, but it appeared that there was a trust for some charity for the benefit of the Chinese community in Bombay, and there was a possession by persons who were objects of the charity. I held that the purchaser was bound to inquire what the nature of that possession was, and was affected by notice of the trust for the charity. The principle is that, if a purchaser, although he may be a purchaser for value, has actual or constructive notice of the trust, he is bound by it to the same extent and in the same manner as the person from whom he purchases. And, where there is a person in possession of the estate other than the nominal owner, the person in whose name the title-deed is, the purchaser is bound to inquire what is the nature of his possession. If he does not think fit to do so, he takes subject to the rights of the person in possession.

That rule must be applied to this case. There may be cases in which a purchase from a benamedar would be sufficient, and would give a good title, but, in such a case as the present, where the defendants were in possession, I think the plaintiffs' purchase from the benamedars did not give them any title or right to recover the property. The appeal will, therefore, be dismissed, although the law laid down by the Subordinate Judge is not correct. The respondent will have his costs.