Appellate Jurisdiction (*a*)

Special Appeal No. 603 *of* 1869.

SITHA UMMAL..... *Special Appellant.*

RUNGASAMI IYENGAR and another. *Special Respondents.*

In a suit by the representative of a mortgagor against *bonâ fide* purchasers for valuable consideration from the mortgagee:

Held, that the period of limitation was twelve years from the date of the purchase under Section 5 of Act XIV of 1859.

Notice of facts from which the infirmity of the vendor's title might be inferred is evidence of *mala fides*, but is not itself *mala fides*, and the question of *bonâ fide* purchase is one of fact.

1870. *June* 21. *S. A. No.* 603 *of* 1869

THIS was a Special Appeal from the decision of T. Kristnasámi Iyer, the Principal Sadr Amin of Tanjore, in Regular Appeal No. 81 of 1869, reversing the decree of the Court of the District Munsif of Valangiman, in Original Suit No. 173 of 1866.

Plaintiff brought this suit to recover three-eighth kara of land alleged to have been mortgaged by her deceased husband to one Kristna Iyengar (since deceased), the uncle of the 1st defendant, for pons 48 about 30 years ago. The plaintiff added that her husband had acquired a title to the land by purchase under the deed B from one Yellappa Udayan, who, she said had previously mortgaged it to him under the deed marked A. The defendants 2 to 6 were included in the suit, the first three as holding possession of quarter kara, and the latter two of one-eighth kara of the land claimed.

The first defendant in his defence allowed that Yellappa Udayan had mortgaged the land in question to the plaintiff's husband, but denied that he subsequently sold it to him as alleged by the plaintiff. The 1st defendant, however, stated that the mortgage bond obtained by the plaintiff's husband from Yellappa Udayan contained a clause to the effect that if Yellappa Udayan failed to repay the mortgage amount to the plaintiff's husband within the term specified therein, the land was to lapse to the latter. Before the expiration however of the term, the plaintiff's husband sub-mortgaged the land to Kristna Iyengar under a bond (Exhibit I) which contained a similar penal clause. The term fixed for the re-payment of the mortgage amount having expired without such repayment being made, the land

(*a*) Present: Holloway and Innes, JJ.

1870. *June* 24. *S.A No.* 603 *of* 1869.

lapsed to Kristna Iyengar. After the demise of Kristna Iyengar, Yellappa Udayan executed a deed (Exhibit III) to Aramathu Iyengar the elder brother of Kristna Iyengar, relinquishing all concern with the land. Aramathu Iyengar then sold one quarter kara of the land to Sheshadri Iyengar, the father of the defendants 2, 3 and 4, under the deed marked IV, and one-eighth kara to Letchmana Iyen, the father of the 5th and the uncle of the 6th defendant under the deed marked V.

The defendants 2 and 6 supported the defence of the 1st defendant, and further pleaded the Law of Limitation in bar of the plaintiff's claim.

The defendants 3, 4 and 5 were *ex-parte*.

The Munsif found for the plaintiff.

The defendants 2 and 6 appealed.

The following judgment was delivered by the Principal Sadr Amin on appeal:—

The primary question to be determined in this appeal is whether the suit is or is not barred by the Law of Limitation.

The Munsif holds that it is not, and the reason assigned by him is that this being a suit to redeem land mortgaged, the period of limitation applicable to it is 60, and not 12 years. I am, however, unable to concur in the propriety of this reasoning.

The suit, in fact, is not to recover from a mortgagee, but to recover from persons who claimed under purchase from a mortgagee. In other words, the suit is to recover from the defendants 2 to 6, who claim under Sheshadri Iyengar and Letchmana Iyen the purchasers of the land in question under the deeds IV and V from Aramathu Iyengar, the brother and representative of the mortgagee Kristna Iyengar. The suit therefore, in my opinion, falls clearly within the scope of Section 5 of the Limitation Act, and the period of limitation to a suit like this is only 12 years from the date of the purchase.

The purchases in the present case under the deeds IV and V were made on the 9th May 1838, and the present

1870.
June 24.
S. A. No. 603
of 1869.

suit was not brought by the plaintiff till the 21st May 1866, or more than 28 years after the date of the purchase. The suit is hence clearly barred.

In the argument, however, the plaintiff's Vakil contends that Sheshadri Iyengar and Letchmana Iyen, under whom the defendants 2 to 6 claim, are not *bonâ fide* purchasers within the meaning of Section 5, since they have made the purchases with notice of a prior equitable right that existed in favor of the plaintiff's husband to redeem the land from the mortgagee Kristna Iyengar.

In reference to the above contention, I have to consider what is the significance of the words "purchased *bonâ fide*" used in the section.

This point, however, appears to have been discussed at length in Radhanath Doss *v.* Gisborne and Co., published in *Thomson's Commentaries on the Limitation Act*, pages 154 to 164. In the Judgment in that case, the Honorable Justice Norman observes: "Now in construing the section (Section 5 of the Limitation Act) in question, we must remember that the terms "*bonâ fide*" "for valuable consideration," and "without notice" as applied to purchasers of real and other property, are all of them perfectly familiar and well understood by all English Lawyers. As we do not find the words "without notice" in the section, we cannot but suppose that the omission was intentional." In another part of the same judgment, it is said, "Assuming that Gisborne and Co., knew that the plaintiffs were putting forth claims on such allegations, that they knew that they were buying a disputed title, it will, in our opinion, not affect their right to be considered as *bonâ fide* purchasers, if they dealt honestly, openly, and above board, and were buying what they believed to be a good title." The Honorable Justice Campbell, in the judgment in the same case states "the policy of the Law seems to be that doubts should not hang for ever on titles, that if a man, without fraud or concealment, purchases a doubtful title, it must be attacked within 12 years or never. To make a purchase *bonâ fide*, the purchaser must have reasonable ground for believing that he buys a good title, although he may know that it is liable to attack."

1870. *June* 24. *S. A. No.* 603 *of* 1869.

It would appear from all the above that perfect good faith is all that is essential to render a purchase *bonâ fide* within the meaning of Section V of the Limitation Act, and that it is not necessary that the purchase should have been made "without notice" of a prior equitable right.

The question therefore to be determined in the present case is, whether Sheshadri Iyengar and Letchmana Iyen, the purchasers under whom the defendants 2 to 6 claim, were *bonâ fide* purchasers of the above description.

A careful examination of the record of the case leaves no shadow of doubt in my mind that both of them reasonably believed when making the purchases under the deeds IV and V that they took a title, which, as honest men, they could defend. There was no fraud or concealment in the whole transaction. The sale deeds IV and V, with the greatest candour, set forth the way in which the land was acquired by Kristna Iyengar. The land is described in them as one which lapsed to Kristna Iyengar under a clause of forfeiture contained in an instrument obtained by him from the plaintiff's husband. The above description, it is clear, the parties have given in the above Exhibits IV and V rather with an idea that it would operate in their favor than that it would be against them.

That such an idea was not unfounded is deducible from the following fact: just a few months before the date of the purchases under the deeds IV and V, or on the 26th February 1838, the plaintiff's husband himself has attested a deed (Exhibit II) executed by Aramathu Iyengar, the brother of Kristna Iyengar to one Strinivassa Iyengar, mortgaging to the latter the land in question. In this deed, the fact of the land having lapsed to Kristna Iyengar in virtue of the clause of forfeiture has been distinctly mentioned. The truth of the deed has been allowed by the Munsif himself. The fact of this deed being attested by the plaintiff's husband is consistent with no other hypothesis than that he acquiesced in the operation to his prejudice of the clause of forfeiture therein alluded to. Naturally, the vendor and vendees can have had no scruple to act on a clause thus submitted to by the plaintiff's husband himself. It is thus obvious that although the purchasers in the present case, when making

1870. *June* 24. *S. A. No.* 603 *of* 1869.

the purchases under the deeds IV and V, had known that an equitable right of redemption had once existed in the plaintiff's husband in respect of the land purchased, yet they had reasonable ground to believe that such a right had ceased in him on the date of the purchases.

For the foregoing reasons, it appears to me that Seshadri Iyengar and Letchmana Iyen were *boná fide* purchasers within the meaning of Section V of the Limitation Act, and that the present suit is therefore barred as shown in paras. 9 and 10 of this judgment.

I accordingly dismiss the suit with costs, in reversal of the original decree.

The plaintiff presented a Special Appeal to the High Court on the ground that the suit was not barred by the Limitation Act.

Mayne, for the special appellant, the plaintiff.

Srinivása Cháriyár, for the special respondents, the second and sixth defendants.

The Court delivered the following

JUDGMENT:—The first question is upon the construction of Section V of the Indian Limitation Act (*a*). That Section is an expansion of Section 25 of the English Act which is an exception engrafted upon Section 24, which for the first time by positive enactment rendered the Statute of Limitation equally applicable to equitable and legal estates. Then Section 25 in not very happy language as to express trusts preserved the old rule, but as against purchasers for a valuable consideration from the trustee applied the statute to *such* purchaser, and those claiming under him and decided that it should run from the period of the purchase (*Magdalen College, Ox.* v. *Attorney General*, VI, H. L. 189—215). To this the Indian Act adds depository, pawnee or mortgagee, and the effect is to enact that in many cases the

(*a*) Section 5 of Act XIV of 1859 enacts:—

In suits for the recovery from the purchaser or any person claiming under him of any property purchased *boná fide* and for valuable consideration from a trustee, depository, pawnee or mortgagee, the cause of action shall be deemed to have arisen at the date of the purchase. Provided that in the case of purchase from a depository, pawnee or mortgagee, no such suit shall be maintained unless brought within the time limited by Clause 15, Section 1.

1870. *June* 24. *S. A. No.* 603 *of* 1869.

purchaser shall by the effect of the statute take more than the vendor had to dispose of, and to abridge the period of limitation given by other parts of the same Act to the mortgagor, depositor and pawnor. In the case of the trustee he had the whole legal estate, and the effect of the sale was to convey it. Here the case is otherwise, but with the light derived from the English Act there can be no doubt that the effect is intended.

Then Mr. Mayne contended that, as matter of Law, notice of facts which, if rightly construed, would have shown the purchaser that the seller was merely a mortgagee, barred the application of the section. We are of opinion however that the question of *bonâ fide* purchase was one of fact, that notice of facts from which the infirmity of the vendor's title might be inferred is evidence more or less cogent of *mala fides* but is not in itself *mala fides*, and that it was open to the Principal Sadr Amin to find that the mistake as to the law under which all the parties had for a long series of years been labouring was *bonâ fide*, and that despite its existence the purchase was *bonâ fide*. There certainly was very cogent evidence from which he might properly draw that conclusion. Notice is evidentiary matter As proof of *mala fides* its weight varies with its own nature. There may be notice of facts which would exclude all possibility of *bonâ fides*, and the scale is infinitely graduated up to the point at which these facts known from their complexity or the obscurity of the legal principles attaching to them are quite consistent with complete good faith. In *LeNeve* v. *LeNeve* Lord Hardwicke did not practically annul the Registration Act, because there was notice, but because there was fraud of which that notice was evidence. There is no ground for our interference and this appeal must be dismissed with costs.

Appeal dismissed.