

Before Sir Chunder Madhub Ghose, Kt., and Mr. Justice Caspersz

UMESH CHANDRA BANERJEE

v.

KHULNA LOAN COMPANY.*

1906

Dec. 7.

Contract Act (IX of 1872) s. 69—Putni taluk—Benamdar—Contribution.

The mortgagee of a share of a putni taluk, in order to save his interest thereon, paid up the putni rent and claimed to recover a proportionate share thereof from the appellant, who had, subsequent to the mortgage, purchased the mortgagor's share in the taluk.

The appellant pleaded that he was only a benamdar for the mortgagor.

Held, that the appellant having held himself out as the purchaser, and having got his name registered in the zemindar's books in place of his vendor, was *prima facie* bound in law to pay the rent, and that under s. 69 of the Contract Act the mortgagee was entitled to succeed.

SECOND APPEAL by the defendant No. 1, Umesh Chandra Banerjee.

The suit out of which this appeal arose was instituted by the Khulna Loan Company on the following allegations:—

That a putni taluk belonging in certain specified shares to three persons, one Akshayanund and the defendants Nos. 2 and 3, was mortgaged to the plaintiff; that when the zemindar was about to cause the putni taluk to be sold under Regulation VII of 1819 for arrears of rent the plaintiff was obliged to pay the arrears and the defendants were benefited by the payment; that long before the date of the payment the defendant No. 1 had purchased the share of Akshayanund. The plaintiff claimed to recover the amount paid by him from the defendants Nos. 1, 2, and 3 in proportion to their respective interests in the taluk.

The only portion of the defence material to the purposes of this report was that taken by the defendant No. 1, who, among

* Appeal from Appellate Decree No. 564 of 1905, against the decree of B. C. Mitter, District Judge of Jessore, dated the 22nd of December 1904, reversing the decree of Srish Chunder Mukerjee, Munsif of Jessore, dated the 19th of September 1904.

other matters, pleaded that the purchase alleged in the plaint was *benami*, that he had acquired no right in and never held possession of the taluk and that he was not liable to the plaintiff's claim.

Akshayanund was subsequently added as party defendant No. 4.

The Munsif, who tried the suit, found that the purchase was a *benami* transaction; he accordingly made a decree against the defendants Nos. 2, 3 and 4 and absolved the defendant No. 1 from liability.

On appeal by the plaintiff the District Judge, without expressing any opinion as to the correctness of the finding of the Munsif on the question of *benami*, held that the defendant No. 1 having, on the strength of his purchase, got his name registered in the landlord's books in place of his vendor and having in various transactions given himself out as the purchaser, the plaintiff was entitled to recover from him. He accordingly gave the plaintiff a decree against the defendant No. 1.

The defendant No. 1 appealed to the High Court.

Babu Nilmadhub Bose and *Babu Hara Prasad Chatterjee* for the appellant.

Babu Dwarka Nath Chakrabarti and *Babu Sarat Chandra Ghose* for the respondent.

GHOSE AND CASPERSZ JJ. This appeal arises out of a suit described as one for contribution. The suit was instituted against three persons—Umesh Chandra Banerjee, Matangini Debi and Brojendra Nath Banerjee, they being the recorded share-holders in a putni taluk, which had been mortgaged to the plaintiffs, the Khulna Loan Company, by Matangini Debi, Brojendra Nath Banerjee and Akshayanund Banerjee. Subsequent to this mortgage, this lastmentioned individual executed a *kobala* in favour of Umesh Chandra, and, as we gather, Umesh Chandra on the strength of his purchase applied for the registration of his name

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in the zemindar's *sherista* in place of Akshayanund; and this was allowed. Subsequent to this transaction, there were various proceedings in Court between other parties and Umesh Chandra, in which he (Umesh Chandra) put himself forward as the real holder of the taluk in place of Akshayanund. Recently, however, the putnidars defaulted to pay the rent due from them to the zemindar, and the plaintiffs, the Loan Company, in order to save their mortgage interest paid up the zemindar's demand and thus saved the putni from sale; and subsequently they brought the present suit against Umesh Chandra, Matangini and Brojendra Nath Banerjee for recovery from them of their respective quotas of the monies that the Company paid on their account with reference to their respective interest in the putni taluk. Umesh Chandra, however, contended that he was but a *benamdar* for Akshayanund, and that he was in no way liable. Thereupon Akshayanund was added as a party defendant.

The Court of first instance found that the plea of *benami* set up by Umesh Chandra was true, and so it gave a decree to the plaintiffs against Matangini, Brojendra and Akshayanund, dismissing the claim against Umesh Chandra. On appeal by the plaintiffs, the learned District Judge has taken a different view of the liability of Umesh Chandra. He has not dealt with the question whether Umesh Chandra, notwithstanding the execution of the *kobala* in his favour, is but a *benamdar* for Akshayanund because he holds that, in law, Umesh Chandra is the person primarily liable to the plaintiffs for the amount demanded from him.

It has been contended by the learned vakil for the appellant Umesh Chandra that, whereas a suit for contribution proceeds upon equitable principles, if, as a matter of fact, Umesh Chandra be but a *benamdar* for Akshayanund, it would be inequitable to pass a decree against Umesh Chandra and not against Akshayanund. Our attention however has been called to the provisions of section 69 of the Indian Contract Act, under which a liability attaches to a person in circumstances like those that exist in the present case. That section runs as follows:—
 “A person, who is interested in the payment of money, which another is bound by law to pay and who, therefore, pays it, is

titled to be reimbursed by the other." The plaintiffs were certainly the persons, who were interested in the payment of the putni rent due to the zemindar; and the question, and the only question, which under this section arises is, whether Umesh Chandra was bound in law to pay his quota of the putni rent. The case is not strictly speaking a case for contribution, properly so called. It is not a case where one co-sharer in a joint estate having paid the entire liability due upon the entire body of shareholders brings a suit for contribution against the other co-sharers for recovery of the amounts respectively due from them. But this is a case where a third party, who is not a co-sharer in the putni estate, in order to save his interest in the estate pays up the zemindar's demand—a demand which the several share-holders of the putni estate were bound to have satisfied, and brings a suit for recovery from them of the amount which he paid on their account in respect of the several quotas of their liability. We have, however, to consider as the learned vakil for the appellant has contended whether Umesh Chandra was bound in law to pay his quota of the rent to the zemindar. *Prima facie*, it seems to us he was bound to pay it, for he having represented to the zemindar that he had purchased this property from Akshayanund, and the zemindar having, upon the faith of his purchase, registered his name in place of Akshayanund, he (the zemindar) was entitled to call upon Umesh Chandra to pay his share of the rent due to him. No doubt, as has been pointed out to us by the learned vakil for the appellant, if the zemindar had brought a suit for recovery of the rent due to him, Umesh Chandra might have set up a defence that in the matter of the registration of his name in the zemindar's *sherista*, he (the zemindar) was perfectly aware of the circumstances under which the application was made, and that the registration was but the outcome of some arrangement or other that was come to between all the parties concerned. That is no doubt a possible case, but we hardly think that any matter like this could be considered in the case now before us, for, *prima facie*, Umesh Chandra was bound in law to pay rent to the zemindar. In this view of the matter, and as already mentioned, Umesh Chandra having put himself forward in various proceedings as the real owner of the putni in

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question, the Loan Company was perfectly justified in bringing the suit against him and the other co-sharers for the recovery of the amount that was due from them. For these reasons we are of opinion that this appeal should be dismissed with costs.

Appeal dismissed.

S. CH. B.