
Munshi Fuzlur Rahaman, Mukhtear Vs Sadar Ali and Others

None

Court: Calcutta High Court

Date of Decision: Jan. 6, 1927

Citation: 107 Ind. Cas. 67

Hon'ble Judges: Mallik, J; Duval, J

Bench: Division Bench

Judgement

Duval, J.

In this case the plaintiff sued for declaration of his title to, and for possession of a certain land. His case was that he purchased it in auction-sale in the benami of defendant No. 5 on the 8th August, 1908, and that subsequently he got possession in the name of his benamdar

who was in possession for sometime, but that in 1915 his benamdar sold the land to defendants Nos. 1 and 2 and he was dispossessed. He

brought a case u/s 9 of the Specific Relief Act and lost it and so he brought this suit. The defence put up in the written Statement of the vendees

was that the plaintiff was never in possession and that defendant No. 6 was not a benamdar and that the suit was barred u/s 66 of the Code of

Civil Procedure. Defendant No. 6 who purported to sell the property has put in a written statement stating that he was a benamdar. After issues

were framed the first Court tried the issue as to whether the suit lay in view of the provisions of Section 66 of the CPC and held that it did not. This

finding has been upheld in appeal. The second appeal is directed on this point only.

2. Now the sale took place as we have stated on the 8th August, 1908. At that time the Code of 1882 was in force and under, Section 316 of that

Code the property purchased in execution of the decree vested on the confirmation of the sale; but the sale was not confirmed until 6th January,

1909, when the Code of 1882 had ceased to operate and had been superseded by the Code Of 1908. Under. Section 65 of the present Code

On the confirmation of the sale, the title to the property is to vest back with retrospective effect from the date of the sale. The argument, therefore,

addressed to us is that by the confirmation of the sale u/s 65 of the new Code the plaintiffs title to the property accrued on the 8th August 1908,

and, therefore, Section 66 of the Code has no application but that Section 317 Of the old Code applies. The chief difference between the two

sections is that whereas under the old Code a suit would lie against the heirs or assignees of a benamdar though not against the benamdar, u/s 66

of the new Code no suit would lie against anyone claiming a title under the certificated purchaser. The learned Vakil for the appellant has referred

to two decisions of this Court, being the case of Promotha Nath Pal v. Sourav Dasi 58 Ind. Cas. 327 : 47 C. 1108 : 24 C.W.N. 1101 : 31 C.L.J.

463 and the case of Makar Ali Vs. Sarfaddin and Others, to support his argument. But in ""both those cases the sale was confirmed before the new

Code came into force, that is to say, before the 1st January, 1909, though in one of them the sale certificate did not issue until after the new Code

came in force and there it was held that the real Makar Ali Vs. Sarfaddin and Others, purchaser could maintain a suit against the transferee as his

right had already accrued under the old Code. The present case, however, is clearly different. No doubt, Section 65 of the new Code states that

when the sale has become absolute the property shall be deemed to have vested in the purchaser from the time when the property is sold and not

from the time when the sale becomes absolute. But the question really before us is whether on the 1st January, 1909, when the new Code came

into force the plaintiffs rights had accrued as a purchaser through the benami of defendant No. 1. In my opinion it had not. In this connection

reference must be made to Section 6 of the General Clauses Act which says that when an Act repeals any enactment hitherto made or hereafter to

be made, then, unless a different intention appears, the repeal shall not affect any right acquired or accrued under any enactment so repealed.

3. The only point, therefore; is whether, as a matter of fact, on the 1st January, the plaintiff's right had accrued. Now even if we take Section 65 as

dating back the right, it is clear that on the 1st January this sale had not become absolute and so the plaintiff's right had not accrued. Now if the

plaintiff's right did not accrue on the 1st January he is clearly bound by Section 66 and if he is bound by Section 66 the plaintiff cannot maintain this

suit.

4. In this view, therefore, I would dismiss the appeal with costs.

Mallik, J.

5. I agree.