(1909) 03 CAL CK 0039

Calcutta High Court

Case No: None

Hara Gobind Saha		APPELLANT
	Vs	
Purna Chandra Saha and Others		RESPONDENT

Date of Decision: March 19, 1909

Judgement

1. The question raised in this appeal is really a very simple one. The plaintiff lent Rs. 105 to the defendant upon a simple mortgage bond. Just within the period of six years'' limitation he Sued the defendant to recover upon this bond. The defendant took a defence, the real character of which has not been noted by either of the lower Courts. It said that the defendant borrowed the money from a money-lending firm which consisted of the plaintiff''s father and his uncle, that this firm was in the benami of the plaintiff and that the plaintiff had no right or ownership in the money borrowed under the mortgage bond. The findings of fact of the lower Court show that this was not the ease. The plaintiff was the son of the karta of a joint Hindu family, and he appears to have had access to the joint family funds of the family. He used these funds to lend Rs. 105 to the defendant and whether he was entitled to do so or not is a question between himself and his co-sharers. It so happened that the co-sharers fell out four years after this mortgage bond and that they were then so much pleased with the transaction which had been entered into by the plaintiff that they appear to have made him sign a statement that all the money lent in his name was joint family property. There is, therefore, nothing actually to show that this money which the plaintiff lent to the defendant was not his own money, and the defendant cannot be heard to say that he did not borrow this money from the plaintiff. This is simply the case on the facts.

2. Then as regards the law even supposing that the plaintiffs were the benamidar, we have the authority of the case in Sachitananda Mohapatra v. Baloram Gorain 24 C. 644, which is admittedly the only authority on this particular point, that a suit even for foreclosure of a mortgage may be brought by the person named in the mortgage deed as the mortgagee, although he was in fact only the benamidar of the beneficial owner, and such a suit should not be dismissed because the beneficial

owner is not added as a party. It is contended before us that the remarks of Mr. Justice Banerjee in Mohendra Nath Mookerjee v. Kali Proshad Johuri 30 C. 265, which are, as the Munsiff has pointed out, in the nature of an obiter, suffice to overrule the clear rule of law laid down in the case of Sachitananda Mohapatra v. Baloram Gorain 24 C. 644 first referred to; but we find that they do nothing of the kind. On the contrary Banerjee, J., distinctly refers to the distinction between a benamidar and a person who has some legal and equitable title in the property. He defines benamidar as a person in whose name any property stands without his having any legal title in the same; and the effect of the decision in Mohendra Nath Mookerjee v. Kali Proshad Johuri 30 C. 265 and the nature of other numerous cases, which are decided in the same way, is this, that a person suing on a title to Immovable property, who is really the benamidar and has no legal or equitable title in the property, cannot maintain the suit. This is an entirely different thing from saying that a person who enters into a contract with another who lends him money, and in pursuance of that contract gives him a lien on his own Immovable property, can be heard to say that some body else supplied the funds which were lent to him. In this view of the case, we consider that the plaintiff is not a benamidar at all. He was perfectly at liberty to use the funds in his hands, whether they belonged to the joint family or any body else. He was perfectly at liberty to invest the funds he had in mortgages. For example, persons, who borrow money from a bank, invest it in mortgages and live upon the interest, are not benamidar of the bank.

3. The decisions of the Courts below, therefore, are wrong on both grounds, firstly they are wrong in considering that the plaintiff is a benamidar at all, and secondly they are wrong in considering that if he was benamidar, he is not entitled to maintain the suit. Finding as do that neither of these propositions can be supported, we must decree this appeal and direct that the plaintiff''s suit be decreed in full with costs in all the Courts.

4. The decree will be drawn up in the usual form of a simple mortgage decree.