

Special Appeal No. 490 of 1869.

1870.
March 31.

SATA'PA' valad DAU DONGRE*Appellant.*
KARBASA'PA' and RUDRA'PA' minors, by
their guardian, SHARUBA'I*Respondents.*

*Benámi Purchase—Purchase in the name of another at a Court's Sale—
Civil Procedure Code, Secs. 259 and 260.*

The immoveable property of A at a court's sale was purchased by B with the money, and on behalf, of A. B subsequently conveyed the property to C for the benefit of A.

Held that the property could be taken in execution by the creditors of A.

Quære—Whether but for the subsequent conveyance B, under the operation of Secs. 259 and 260 of the Civil Procedure Code, would not have had a good title against the creditors of A.

THIS was a Special Appeal from the decision of S. H. Phillpotts, Acting Senior Assistant Judge at Solápur, in Appeal Suit No. 32 of 1868, reversing the decree of the Munsif of Bársí.

The plaintiff, Satápá, alleged that a certain house, situated in the town of Vairág, was formerly the property of one Apá Shende; that Apá's right, title, and interest therein were sold through the Civil Court and purchased by one Mulú, who sold it to the plaintiff in 1862; and that from that time the plaintiff had had possession of it until it was attached and sold by the defendant in execution of a decree against Apá.

The plaintiff had applied for the removal of the attachment, under Sec. 246 of the Code of Civil Procedure, but his application had been rejected; he, therefore, brought this suit to establish his right to the property.

The defendant pleaded that the purchase by Mulú was on behalf of Apá, and that the sale by Mulú to the plaintiff was a colourable transaction to deceive the creditors of Apá, who had himself supplied the purchase-money to Mulú.

The court of first instance found the sale to Mulú to be *boná fide*, and made a decree for the plaintiff. This decree was reversed by the court of regular appeal, which decided in favour of the defendant.

The special appeal was heard before WARDEN and MELVILL, JJ., on the 21st of January 1870.

1870.
SATA'PA' DAU
DONGRE
v.
KARBASA'PA'
et al.

Shántárám Náráyan, for the appellant:—The lower court has found that the plaintiff's vendor is a certified purchaser at a court's auction-sale. That gave the purchaser a valid title. The fact that the purchase was fraudulent and made with the money of another man, even though that other might be the judgment-debtor himself, is immaterial, for in Sec. 260 of the Code it is clearly enacted that any suit brought against a certified purchaser (and the same reason applies to his assignee) on the ground that the purchase was made on behalf of another person, though by agreement the name of the certified purchaser was used, shall be dismissed. This provision was enforced in the case of *Jokhee Lall v. Mussamut Huns Kooer (a)*.

Pánduráng Balibhadra, for the respondent, cited *Mirza Khyrát Ali v. Mirza Syfoolla Khan (b)*.

Cur. adv. vult.

On the 31st of March 1870 the Court delivered the following judgment:—

The Assistant Judge has found that the property purchased by Mulú at an auction-sale was bought with the judgment-debtor's (Apá's) money, and on behalf of Apá. It has been argued, with reference to Secs. 259 and 260 of the Code of Civil Procedure, that, under these circumstances, the Assistant Judge was wrong in holding that the property continued the property of Apá. There is no doubt that the effect of the above sections was to give Mulú a perfect title as against Apá, and it may be that if Mulú had chosen to retain the property Apá's creditors would have been unable to touch it. But Mulú executed a conveyance of the property; and the Assistant Judge has found in effect that, although the conveyance was in the name of the appellant, Satápá, it was really for the benefit of Apá. In other words, it was a *benámi* sale to Apá, made in consideration of Apá having supplied the purchase-money at the auction-sale. Apá being the real owner, the property is available for his debts, and the court below was right in rejecting Satápá's claim.

Decree affirmed.