

[APPELLATE CIVIL JURISDICTION.]

*Special Appeal No. 69 of 1873.*1873
July 10.MOR JOSHI *Appellant.*MUHAMMAD IBRA'HIM et al *Respondents.**Civil Procedure—Sec. 260 of Act VIII, of 1859—Benámi Purchase.*

A's property is sold under a decree to *B*, a *boná-fide* purchaser, who offers to *A* to reconvey to him on being repaid the purchase money.

Held that if *A* accepts the proposal, Sec. 260 of the Civ. Proc. Code does not preclude a contract from arising.

THIS was a special appeal against the decision of H. Birdwood, Judge of the District of Ratnágiri, confirming the decree of the First Class Subordinate Judge at that station.

The special appeal was heard by MELVILL and WEST, JJ.

Shántárám Náráyan for the appellant.

Shivshankar Govindrám for the first respondent. The other respondent put in no appearance.

MELVILL, J. :—The facts of this case are undisputed, and there is no reason to suppose that they are misrepresented. The plaintiffs' property being for sale under a decree, the first defendant purchased it with his own funds; but, probably because he was a friend of the plaintiffs' and wished to give them a chance of redeeming their property, if their circumstances should improve, he agreed to reconvey to them on receipt of the purchase money, and a promise to this effect was made in writing on the day after the sale. The plaintiffs, by their assignee, now sue to compel the defendant to receive the amount of the purchase money, and to execute a conveyance. Both the Courts below have dismissed the suit, on the ground that it is prohibited by Sec. 260 of the Code. But we are of opinion that the object of that section is to prevent, what are called in this country *benámi* purchases, *i.e.*, purchases made in the name of one person with the funds and for the benefit of another: *Moulvi Syad Azhar Ali v. Mussamat Bibi Altaf Fatima* (a)—the effect of which, if they were

(a) 4 Beng. L. Rep. P.C.1.

allowed in the case of execution sales, might be to render it unsafe for third parties to deal with the certified purchaser as the real owner of the property. The transaction in the present case involved no such danger, and appears to us to come neither within the spirit nor the letter of Sec. 260. The defendant did not purchase on behalf of the plaintiffs, but on his own behalf. He paid the purchase money, he became the legal owner of the property, he held it free from any trust, and was in a position to convey a good title to any other person. We think, therefore, that the decrees of the Court below must be reversed.

It is contended for the defendants that the promise was without consideration. That document shows nothing more than a proposal to sell, and the defendant cannot be compelled to carry the proposal into effect, unless it be proved, on the part of the plaintiffs, that there was such an acceptance of the proposal and reciprocal promise by the plaintiffs as will render the whole transaction a valid contract. The case must be remanded for a determination of this question.

Costs to follow final decision.

Decree reversed and case remanded.

1873.

MOR JOSHI
v.
MUHAMMED
IBRAHIM.