APPELLATE CIVIL.

Before Mr. Justice Melvill and Mr. Justice Pinhey.

1882
September 18.

NAGINBHAI AND ANOTHER (ORIGINAL DEFENDANTS), APPELLANTS, *v.* ABDULLA (ORIGINAL PLAINTIFF), RESPONDENT.*

Benami transaction by Hindu or Mussalman—Property bought by a fatherin his son's name—Advancement—Presumption—Evidence—Nature of evidence to rebut—Onus of proof.

When a purchase is made by a Hindu or a Mahomedan in the name of his son, the presumption is in favour of its being a *benami* purchase; and it lies on the party in whose name it was purchased to prove that he is solely entitled to the legal and beneficial interest in the estate. When the rights of creditors are in issue in such a transaction very strict proof of the nature of the transaction should be required from the objector to such rights, and the burden of proof lies with more than ordinary weight on the person alleging that the purchase was intended for the benefit of the son.

THIS was a first appeal from the decree of Rao Bahadur Mangeshrao Balvant, First Class Subordinate Judge of Surat.

The defendants sued the plaintiff's father, Nasar, in the High Court of Bombay (original jurisdiction side) and obtained a decree against him on the 3rd of May, 1876. In execution of this decree they attached three pieces of land and a house in Surat as the property of their judgment-debtor, Nasar. The plaintiff in a miscellaneous petition applied to the Subordinate Judge of Surat to have the attachment raised, but it was rejected on the 31st of October, 1879. The plaintiff now sued for a declaration of his own right to the property and to prevent the defendants from attaching and selling it as the property of his father, Nasar. The defendants contended that the property had been purchased with Nasar's money and belonged to him and was liable to attachment and sale in execution of their decree against Nasar.

The Subordinate Judge held the purchase not to be *benami*. He said: "It is clear that when the disputed properties were purchased, the defendants had not obtained their decree against Nasar, the said decree having been obtained in May, 1876. There is, therefore, no ground to suppose that the transactions in question were fraudulently made to evade the execution of the defendants' decree. Bearing in mind this point, as also the evi-

* Regular Appeal, No. 67 of 1881.

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dence of Nandlal, which shows that the plaintiff alone managed the property and received the income, I come to the conclusion that the plaintiff holds the property, sued for, beneficially and for his own interest, and that the money paid by his father as purchase money was an advancement in his favour, and Nasar has no title over the said property. I, therefore, hold that the plaintiff is entitled to a decree."

The defendants appealed to the High Court.

Nanabhai Haridas, Government Pleader, for the appellants.—The properties which the defendants seek to attach were purchased by a Mahomedan in the name of his minor son, and the presumption is that the purchase is *benami: Gopee Krist Gosain* v. *Gunpersaud Gosain*(1); *Sayyud Uzhur Alí* v. *Bebee Ultaf Fatima*;(2) *Nawab Azimat Alikhan* v. *Hurdwaree Mull.*(3) Very strict proof is required to rebut this presumption.

Shantaram Narayan for the respondent.—Assuming that such a presumption arises, we submit it is rebutted by the evidence adduced.

MELVILL, J.—This is a suit to raise an attachment placed upon a house and three pieces of land by the creditors of plaintiff's father, Nasar. The property was purchased by Nasar, about ten years before the suit, in the name of his son, and the Subordinate Judge has found that the purchase was an advancement in favour of the son. It has been repeatedly laid down by the Judicial Committee that, when a purchase is made by a Hindu or Mahomedan in the name of his son, the presumption is in favour of its being a *benamí* purchase, and it lies on the party in whose name it was purchased to prove that he is solely entitled to the legal and beneficial interest in the estate. It has been also said (*Ahmed Ali Khan* v. *Hardwari Mall*(4)) that when the rights of creditors are in issue, very strict proof of the nature of the transaction should be required from the objector to such rights; for that it would be easy, if such vigilance and jealously were not exercised, for a family to place the family property out of the reach of creditors. In the present case the property was un-

(1) 6 Moo. I. A. 53.
(2) 13 Calc. W. R. 1 P. C.; 13 Moo. I. A. 232.
(3) 13 Moo. I. A. 395.
(4) 5 Beng. L. R. 578.

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doubtedly purchased by the father during his son's minority. It is in evidence that, after the purchase, the father and son lived together in the purchased house. As regards the land, it would seem that rent notes were taken in the son's name, and that rent was paid to the banker of the father and son, and credited in the son's name, and an account thereof was rendered by the banker to the son; but it appears from the banker's evidence that the account was originally a mere transfer of the father's balance to the name of the son; and it would, of course, be perfectly easy for the father and son to arrange the matter between themselves, so that the son should account for the rents to the father. It is possible that the transaction was a real one, and that the purchase was intended for the benefit of the son; but the burden of proof lies with more than ordinary weight on the person alleging the *bona fides* of such transaction, and the evidence in this case is too slender to enable us to say that the plaintiff has discharged himself of that burden.

The decree of the lower Court is reversed, and the claim rejected with costs.

APPELLATE CIVIL.

FULL BENCH.

Before Sir Charles Sargent, Kt., Chief Justice, Mr. Justice Melvill and Mr. Justice Kemball.

LALLUBHAI, PLAINTIFF, *v.* NARAN, DEFENDANT.*

September 18.

Limitation Act XV of 1877, Schedule II, Article 132—Mortgage—Suit by mortgagee to recover debt from the mortgagor personally—Money decree.

Article 132 of Act XV of 1877, Schedule II, is applicable to a suit, by a mortgagee to obtain a mere money decree, to which suit, therefore, the limitation of twelve years from the time the money sued for becomes due applies.

Pestanji Bezanji v. Abdool Rahiman (1) overruled.

UNDER section 617 of the Code of Civil Procedure Rao Saheb Dolatrai Sampatrai, Subordinate Judge of Kheda, stated the following case for the orders of the High Court:—

"The plaintiff in the case presented a plaint on the 10th of January, 1882, in this Court to recover money due on a *sankhat*

* Civil Reference, No. 6 of 1882.

(1) I. L. R. 5 Bom. 463.