

APPELLATE CIVIL.

Before Mr. Justice Astōn and Mr. Justice Heaton.

1906.

September 17.

HARI GOVIND JOSHI AND OTHERS (ORIGINAL PLAINTIFFS), APPELLANTS,
v. RAMCHANDRA NARAYAN GOLE AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

Civil Procedure Code (Act XIV of 1882), sec. 317—Certified purchaser—Interpretation.

The expression "certified purchaser" in section 317 of the Civil Procedure Code (Act XIV of 1882) includes the person standing in the shoes of the Court purchaser.

SECOND appeal from the decision of C. C. Dutt, Assistant Judge of Thana, confirming the decree passed by N. B. Chaubal, Subordinate Judge at Kalyan.

Suit to recover possession of land.

The land belonged originally to one Nasarwanji Dosabhai.

The plaintiffs Hari Govind Joshi and others obtained in 1875 a decree against Nasarwanji. In execution of the decree, Nasarwanji's land was sold on the 20th January 1876. At the auction sale, the land was purchased by the father of the defendants.

The plaintiff sued to recover possession of half of the land alleging that the defendants purchased the land at the Court-sale jointly for them and the plaintiffs.

The defendants in their written statement traversed this allegation and contended that the land was purchased by them on their own account.

The Subordinate Judge held that the agreement to purchase the plaint land in common between the plaintiffs and defendants was illegal and that on this ground the suit was not maintainable. He further held that the suit was barred by section 317 of the Civil Procedure Code (Act XIV of 1882).

On appeal the Assistant Judge confirmed the decree, who held that the agreement was illegal and the suit was therefore not maintainable. On the second point, the learned Judge was of opinion that section 317 of the Civil Procedure Code presented no bar to the suit. His reasons were as follows :—

* Second Appeal No. 74 of 1906.

1906.

HARI
GOVIND
v.
RAMCHANDRA

The transaction in question was a Benami purchase and no suit can be maintained against the certified purchaser under section 317, Civil Procedure Code. But this suit is not against the Benami purchaser, who was defendant 3's father, but against people who claim through him. I. L. R. XXI All. 196 clearly applies here. The provisions of section 317 are therefore not applicable. It is idle to say that defendants 1 and 2 being purchaser's brothers do not claim through him, but were joint purchasers. There is nothing to show that they were joint purchasers; there is nothing to show that the father of defendant 3 spent their money in making the purchase.

Next point is to see whether the agreement was illegal and therefore not enforceable. The plaintiff was the judgment-creditor and according to section 294 of the Civil Procedure Code he could not purchase the property without the Court's permission. But the plaintiffs' pleader says that according to the Code such a purchase would be voidable only at the option of the judgment-debtor. Now if the purchase is not openly made how is the judgment-debtor to know and protest. It is clear then, that the Benami purchase served the purpose of hiding the fact from the person who could protest. It is clear that the object of the agreement was to avoid the provisions of section 294. It is therefore illegal. The lower Court has taken another view of section 294. I do not think such a purchase is intended by the Code to be void.

The plaintiffs appealed to the High Court.

V. G. Ajinkya, for the appellants:—The lower appellate Court erred in holding that the sale was void by reason of section 294 of the Civil Procedure Code (Act XIV of 1882). The decree in execution of which the land was sold was passed in 1875, and the sale took place early in 1876. The case is therefore governed by the Civil Procedure Code of 1859 (Act VIII of 1859); and this Act contains no provision similar to section 294 of the Code of 1882. The section was introduced for the first time in the Civil Procedure Code of 1877 (Act X of 1877).

Even assuming that it was obligatory on the decree-holder to take permission from the Court before he could bid at the auction-sale, the sale in absence of permission to him cannot be *ipso facto* void but only voidable, and it holds good until the judgment-debtor moves the Court to set it aside. *Javherbai v. Haribhai*⁽¹⁾, *Chintamanrav Natu v. Vithabai*⁽²⁾, *Veerapah Chetty*⁽³⁾ and *Paramasiva v. Krishna*⁽⁴⁾.

Section 317 of the Civil Procedure Code (Act XIV of 1882) does not come in our way. This section should be construed

(1) (1881) 5 Bom. 575.

(2) (1887) 11 Bom. 538.

(3) (1870) 14 Cal. W. R. 405.

(4) (1891) 14 Mad. 498.

very strictly and literally. The words "certified purchaser" in the section mean only the person who bought at the sale and obtained the certificate and no one else whatever. See *Mussumat Buhuns Kowur v. Lalla Buhoree Lall*⁽¹⁾; and also, *Lokhee Narain Roy Chowdhry v. Kalypuddo Bandopadhya*⁽²⁾; *Sibta Kunwar v. Bhagoli*⁽³⁾; *Dukhada Sundari Dasi v. Srimanto Joardar*⁽⁴⁾. And if the legislature had intended the "heirs and representatives" within the term "certified purchaser" it would have said so expressly.

P. P. Khare, for the respondents:—Although there was no provision in the Civil Procedure Code of 1859 (Act VIII of 1859) similar to section 294 in the present Code of Civil Procedure (Act XIV of 1882), at that time there was existing the practice of the Courts not to allow a decree-holder to purchase his judgment-debtor's property at a Court-sale without first obtaining the Court's permission. See *Bandhu Roy v. Hanuman Sing*⁽⁵⁾, and probably this rule of practice was crystallised into section 294 in the Civil Procedure Code of 1872.

Section 317 of the Civil Procedure Code (Act XIV of 1882) cannot be read alone, it must be read along with section 294 and so read, it would appear that the words "certified purchaser" used in section 317 are sufficiently wide to include those who stand in his shoes. The case of *Mussumat Buhuns Kowur v. Lalla Buhoree Lall*⁽¹⁾ says that the section should be construed strictly, but it does not decide that the term "certified purchaser" does not include his representatives.

If it were held that the term "certified purchaser" does not include his representatives, the result would be anomalous. After the death of a certified purchaser his representatives can be sued, while a certified purchaser himself will be immune on those very grounds against which section 317 is intended as a protection.

ASTON, J.—In this case the plaintiffs, the present appellants, sued to recover what they have called their half share in the land

(1) (1872) 14 Moo. I. A. 496.

(3) (1899) 21 All. 196.

(2) (1875) L. R. 2 I. A. 154.

(4) (1899) 26 Cal. 950.

(5) (1869) 3 Beng. L. R. (A. J.) 320 at p. 322.

1906.

HARI
GOVIND
v.
RAMCHANDRA.

described in the plaint, together with mesne profits, alleging that it was sold in execution of plaintiffs' Decree No. 665 of 1874 by Darkhast No. 1054 of 1875, and was bought by defendant 3's father both for the plaintiffs and defendants jointly, and that it was subsequently enjoyed jointly by them. The defendants are in actual possession of the land in suit. The defendants denied that the land was bought jointly, or, that the plaintiffs had ever received any of the profits of the land.

The first Court decided that the agreement to purchase the plaint land in common was illegal, and that on that ground the suit was not maintainable, and further that the suit was barred by section 317, Civil Procedure Code, and on these findings dismissed the plaintiffs' suit with costs.

On appeal, the Assistant Judge, Thána, decided that the suit was not barred by section 317, Civil Procedure Code, but that the suit was not maintainable as the agreement was illegal, because it was clear that the object of the agreement was to avoid the provisions of section 294, Civil Procedure Code, and on these grounds confirmed the decree of the first Court.

The ground, upon which the decree was confirmed in the lower appellate Court, cannot be sustained, because section 294, Civil Procedure Code, as it appears in the present Code, was enacted after the date of the Court-purchase in question, and further the provisions of the Civil Procedure Code do not make the purchase by the decree-holder without the consent of the Court a void transaction.

Mr. P. P. Khare for the respondents has here sought to uphold the decree, on the ground that section 317, Civil Procedure Code, is applicable to this suit, because the suit as brought, is not itself a suit against the certified purchaser, on the ground that the purchase was made on behalf of any other person or on behalf of some one else, through whom such person claims. The case upon which Mr. Khare relied, is the case of *Ramakrishnappa v. Adinarayana*⁽¹⁾ where it was held that,—“Section 317 only enabled the certified purchaser and those claiming under him to avoid arrangements made with him in the nature of a trust, and was no bar to the suit,”—showing that the Madras High Court

(1) (1935) 8 Mad. 511.

held that a 'certified purchaser' covers a person standing in his shoes; thus certified purchaser does not mean only the person, so named and entered in the Court sale as Court purchaser.

Mr. Ajinkya has relied upon two decisions, in *Sibta Kunwar v. Bhagoli*⁽¹⁾ and *Dukhada Sundari Dasi v. Srimonto Joardar*⁽²⁾ where it appears that both the Allahabad and Calcutta High Courts have held that certified purchaser referred to in section 317, Civil Procedure Code, does not include a person claiming through or under a certified purchaser. The decisions of the Calcutta and Allahabad High Courts, when examined, rest upon the observations of the Privy Council in *Mussumat Buhuns Kowur v. Lalla Buhoree Lall*⁽³⁾ that section 260 (of the Civil Procedure Code Act VIII of 1859), which corresponds to section 317 of the present Code, should be construed strictly and literally and the *ratio decidendi* adopted in these cases in deciding the point whether a Court purchaser covers a person standing in the shoes of the Court purchaser, is the certified purchaser, was a literal interpretation of section 317, Civil Procedure Code, and of that section only. It is important to observe, that their Lordships of the Privy Council in deciding the case in 14 Moore's I. A. stated at p. 525, that "The object, which the framers of the Code probably had in view was, to prevent judgment-debtors becoming secret purchasers at the judicial sales of their property, and to empower the Court selling under a decree to give effect to its own sale, without contention on the ground of *benamee* purchase, by placing the ostensible purchaser in possession of what it had sold, and of insuring respect to that possession by enacting that any suit brought against him on the ground of *benamee* shall be dismissed."

It does not appear necessary to hold that their Lordships were laying down that, that was the sole object of the framers of the Act in enacting section 260 of the Code of 1859. In the more recent Code the Legislature have clearly shown an intention to prevent decree-holders from becoming secret purchasers at a judicial sale; so that although section 260 of the previous Code

(1) (1899) 21 All. 196.

(2) (1899) 26 Cal. 950.

(3) (1872) 14 Moo. I. A. 496.

1906.

HARI
GOVIND
v.
RAMOHANDEA.

1906.

HARI
GOVIND
v.
RAMCHANDRA.

is to be found in an expanded form in section 317 of the present Code, we find section 294 added in the present Code which did not exist in the Code of 1859: *viz.*, that no holder of a decree in execution of which property is sold, shall, without the express permission of the Court, bid for or purchase the property, and para. 3 of that section runs as follows:—

“When a decree-holder purchases, by himself or through another person, without such permission, the Court may, if it thinks fit, on the application of the judgment-debtor or any other person interested in the sale, by order set aside the sale;

The period of limitation applicable to such application for setting aside the order of sale on the above ground is 30 days. So that the remedy here provided for checking any contravention of the first para. of this section would clearly meet only cases where the purchase is open, and unconcealed from the judgment-debtor or other person interested in the sale. When again we refer to the other sections of the Code, such as 310A, 311, 312, 313, 315, there seems to be no doubt that the purchaser mentioned in these sections would cover also any person standing in the shoes of the actual Court purchaser. It is difficult to find any reason why in interpreting section 317, we should confine attention to the words of that section alone, instead of reading that section together with section 294 of the Code. So reading it and bearing in mind the remarks of the Privy Council already quoted in 14 Moore's I. A. 496, it appears to me that, on a proper construction of section 317 read with section 294, the words “certified purchaser” in section 317 do include the person standing in the shoes of the Court purchaser.

It was however contended by Mr. Ajinkya that the case should be remanded to the lower Court for decision.

Whether the plaintiff has proved title to a half share in the plaint land other than under the Court purchase?

We have examined the plaint in suit and pleadings, and it does not appear from them, that any such case was sought to be made out by the plaintiffs in bringing this suit. It is, therefore, unnecessary to remand the case.

The decree of the lower appellate Court must accordingly be confirmed with costs.

HEATON, J. :—The law as stated in section 294, Civil Procedure Code, cannot apply to this sale, which took place in 1875, when there were no corresponding provisions in the law.

We are asked to take the words “certified purchaser” in section 317 to mean the person who bought at the sale and obtained the certificate, and no one else whatever; and to assume that the expression excludes any representative or person on whom the rights and obligations of the purchaser have devolved. We are not asked to read the section in this way by any natural or ordinary process of interpretation: for, if we interpret “certified purchaser” in this way in section 317, we must similarly interpret these words in sections 310A, 312, 313 and 315; in which case very curious and anomalous results would follow: as for instance, in case the actual purchaser died immediately after his purchase. The very restricted interpretation we are asked to give is based on two decisions of other High Courts, one of the Allahabad and the other of Calcutta High Court, which proceed on the ground that section 317 is to be interpreted strictly and literally. This conclusion is arrived at by a consideration of the Privy Council judgment in the case of *Mussumat Buhuns Kowur v. Lalla Buhoree Lall*⁽¹⁾. In that case the question was whether, seeing that a claim could not be maintained against the certified purchaser, as defendant, it could be urged as a defence in a suit in which the certified purchaser himself was the plaintiff. The question mainly discussed was, whether a *benami* purchase is in itself illegal. The conclusion arrived at was, that it is not; that section 317 (or rather section 260 of the then existing Code) did not make it illegal; and that the section was not to be interpreted to mean more than it said. Adopting the view that the section is not to be read as meaning more than it says; it is still, for the reasons stated, an unreasonable interpretation to hold that the words “certified purchaser” necessarily exclude the representative of the purchaser.

I concur in the order proposed by my learned colleague.

Decree confirmed.

R.R.

⁽¹⁾ (1872) 14 Moo. I. A. 496.

1906.

HARI
GOVIND
v.

RAMCHANDRA.