

## APPELLATE CIVIL.

*Before Mr. Justice Chandavarkar and Mr. Justice Heaton.*

VYANKAPACHARYA BIN SHRINIVASACHARYA (ORIGINAL PLAINTIFF),  
APPELLANT, *v.* YAMANASAMI, DAUGHTER OF RADHASAMI (ORIGINAL  
DEFENDANT), RESPONDENT.\*

1911.  
February 20.

*Vendor and purchaser—Sale of property in possession of a third person—  
Person in possession claiming to be owner—The vendor a benamidar—  
Negligence.*

The plaintiff purchased a house from a person who had the title-deeds of the house made out in his name. The house was in the defendant's possession, who claimed to be its owner and it appeared that the plaintiff's vendor was only a *benamidar* for the defendant. The plaintiff sued to recover possession of the house from the defendant:—

*Held*, that the plaintiff could not succeed, because he omitted to make the inquiries which he was bound to make to perfect his own title and by his own negligence exposed himself to the risk of purchasing property which in reality belonged not to his vendor but to the defendant.

SECOND appeal from the decision of F. X. DeSouza, District Judge of Bijapur, confirming the decree passed by H. V. Kane, Subordinate Judge of Bagalkot.

Suit to recover possession of a house.

The house in question was sold by its owner Solbanna to one Guracharya on the 4th July 1903. Guracharya died in 1905 and on the 2nd October 1907 his widow Laxmibai sold it to the plaintiff.

The house was in the possession of Yamanasami (the defendant), a concubine of Guracharya. She claimed to be its owner saying that the house was purchased for her with her own money by Guracharya, who was a *benamidar* for her. The plaintiff sued to recover possession of the house from the defendant. The defendant in reply set up her ownership to the house. The Subordinate Judge found it proved that the defendant had purchased the house in suit from Solbanna with her own money and got from him the sale-deed in Guracharya's name *benami* for her; that the plaintiff had no notice of it; and that the

\* Second Appeal No. 139 of 1910.

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plaintiff was not entitled to the possession of the house. On appeal, the District Judge also held that the sale to Guracharya was a *benami* transaction, the real beneficiary having been the defendant; and that the plaintiff had notice of the circumstances. The plaintiff appealed to the High Court.

*N. V. Gokhale* for the appellant.

*V. R. Sirur* for the respondent.

CHANDAVARKAR, J.:—This was a suit to recover the property in dispute from the defendant on the allegation that it originally belonged to one Solbanna, who sold it on the 4th of July 1903 to Guracharya by Exhibit 11; that Guracharya having died in 1905 it descended to his widow Laxmibai; that she sold it, on the 2nd of October 1907, to the plaintiff by a sale-deed (Exhibit 12).

The defendant, who was in actual possession, pleaded that she was the owner of the property, and that Guracharya's purchase (Exhibit 11) was *benami* for her, because, she having been in his keeping, he had purchased the property for her, in his name, with her own money.

In the Court of first instance the issues raised were:—Whether the defendant had purchased the house in suit from Solbanna with her own money and got from him the sale-deed (Exhibit 11) in Guracharya's name *benami* for her? That issue was found in the affirmative. The second issue was:—Whether the plaintiff had notice of that fact? And the Court found that the plaintiff had no notice. The third issue was:—Whether the plaintiff was the owner of the house in suit? The Court found that the plaintiff was not the owner, and that, therefore, the plaintiff was not entitled to the relief which he claimed, either by way of possession or mesne profits.

The plaintiff appealed. The lower appellate Court agreed with the Court of first instance on all the questions of fact. And with reference to the question of the plaintiff's notice of Guracharya's *benami* purchase, that Court observed that "the plaintiff must be held to have had constructive notice of whatever rights actually vested in the defendant, because the defendant was the person in possession, although as a matter of fact there was no direct evidence of knowledge."

It is contended before us that this view of the learned District Judge is erroneous in law. It is true that the plaintiff had no notice of the defendant's ownership; and that the plaintiff was misled by the fact that the sale-deed (Exhibit 11) was in Guracharya's name, and that, on his death, it was in the custody of his widow Laxmibai. So far the plaintiff had reason to believe that the property belonged to Guracharya, and he could have successfully urged estoppel as against the defendant but for another principle of law. It is found by the Court below that the property was in the actual possession of the defendant at the date of the plaintiff's purchase. It was therefore the plaintiff's duty, not merely to rely upon the paper title disclosed by the sale-deed Exhibit 11, but also to make enquiries of the defendant in actual possession as to her title. Therefore, so far as the defendant was concerned, the plaintiff, having failed to make any enquiries of her, was bound by such title as she possessed. This is the law expounded in *Kondiba v. Nana*<sup>(1)</sup>, and it applies to the facts of this case. The plaintiff fails because he omitted to make the enquiries which he was bound to make to perfect his own title and by his own negligence exposed himself to the risk of purchasing property which in reality belonged not to his vendor but to the defendant.

The decree must, therefore, be confirmed with costs.

*Decree confirmed.*

R. R.

(1) (1903) 27 Bom. 408.

## CRIMINAL REVISION.

*Before Mr. Justice Chandavarkar and Mr. Justice Heaton.*

EMPEROR *v.* AMIR BALA.\*

*Criminal Procedure Code (Act V of 1898), section 123—Order to furnish security—Reference by Magistrate to Sessions Judge—Sessions Judge to go into merits of the case.*

In a proceeding under sections 110 and 118 of the Criminal Procedure Code, 1898, the Magistrate ordered the accused to be bound over for a period

\* Criminal Application for Revision, No. 420 of 1910.

1911.

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v.  
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1911.

March 2.