

Govind Atmaram Vs. Santai

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Court : Mumbai

Decided On : Aug-15-1887

Reported in : (1888)ILR12Bom270

Judge : Charles Sargent, C.J. and ;Nanabhai Haridas, J.

Appellant : Govind Atmaram

Respondent : Santai

Judgement :

Charles Sargent, C.J.

1. The Judge says that 'it was incumbent on the defendant to show that the transaction (viz., the alleged sale to plaintiff) was altogether a fictitious one.' This view is, however, opposed to the ruling in Tillakchand Hindumal v. Jitamal Sudaram 10 Bom, H.C. R 206 as explained in Rajan Harji v. Ardeshir Hormusji Wadia I.L.R., 4 Bom. 74 . The defendant had obtained an order maintaining his attachment, and it was incumbent on the plaintiff, who impugns that order by the present suit, to prove her case. For this purpose it would be necessary for the plaintiff to prove the payment of the purchase-money, and that she had since been in possession.

2. As the Judge has considered the evidence from a wrong point of view, we cannot accept his conclusion on the question whether the sale to the plaintiff was a real transaction, and must reverse the decree, and send back the case to the

lower Court of appeal for a fresh decision. Costs of this appeal to be costs in the cause.

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