

Narayan Dei Vs. Durga Dei and ors.

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Court : Allahabad

Decided On : May-27-1912

Reported in : 16Ind.Cas.489

Judge : George Knox, J.

Appellant : Narayan Dei

Respondent : Durga Dei and ors.

Judgement :

George Knox, J.

1. In order to understand this appeal, it will be better in the beginning to set out that one Bhola Nath had a wife, named Musammat Sunder Dei. Of these two, were born four ladies, Musammat Narain Dei, Musammat Durga Dei, Musammat Uttam and Musammat Piari. Bhola Nath died leaving his widow and these four ladies him surviving. Musammat Sunder Dei is now dead, and the dispute relates to property which is said to be the property of Musammat Sunder Dei. It will be well to note also that the lady, Musammat Durga Dei, married one Baldeo, In this appeal, the parties are Musammat Narain Dei, who was the plaintiff in the Court of first instance, Musammat Durga Dei and her husband Baldeo. The property with which this appeal is concerned, is a house situate in Mohalla Mandi Said Khan in the city of Agra. This house was put up to sale by the Civil Court at Agra. It was purchased--so the sale certificate sets out--by Baldeo. The Sale certificate shows

that it was sold subject to a lien of Rs. 119-14-0, arising out of a deed, dated June 3, 1891, of which one Ganga Prasad was the holder. Musammat Narain Dei came into Court and asked for possession of this property as being part of the property left by Musammat Sunder Dei. After setting out the pedigree, she alleges that Musammat Sunder Dei, her mother, got possession of all the property left by Bholanath, and that in her life-time, she purchased the house in dispute, adjoining the house left by Bholanath, and included it in one house. The purchase was made, she says, by Musammat Sunder Dei, out of the money which she had inherited, but she adds that the name of Baldeo was entered fictitiously. According to her, Musammat Sunder Dei always remained in possession of the property. She puts the cause of action as arising on the 10th March 1907. In the written statement, the defendants distinctly denied that the house in dispute was purchased by Musammat Sunder Dei; they deny that she was the owner of it, they specifically deny that the property was purchased fictitiously in the name of Baldeo, and that Musammat Sunder Dei was ever in adverse possession of it. The Court of first instance, holding that Musammat Sunder Dei was in the receipt and enjoyment of the rent of the house in dispute up to the date of her death, and that Baldeo had no right after her death--the date of wrongful possession as against the legal heirs of Musammat Sunder Dei--decreed the plaintiff's claim for possession of a one-third share in the house in dispute, and directed that it should be partitioned. In appeal, the lower Appellate Court held that Section 66 of the Code of Civil Procedure of 1908 barred this suit. It held that Baldeo was the purchaser certified by the Court; and in consequence decreed the appeal which had been brought by Baldeo and Durga Dei, and modified the decree of the Court of first instance, directing that the suit for possession by partition of the house in Mandi Said Khan be dismissed together with mesne profits for the same. Musammat Narain Dai comes herein appeal and contends, first, that Section 66 of Act V of 1908 has no application; secondly, that the plea was for the first time raised in appeal, and the lower Appellate Court should not have entertained it. There is a third plea by which it is contended that the whole of the house in Mohalla Mandi Said Khan was not purchased by a sale of the Civil Court, that only one-third of it was so purchased and the remaining two-thirds were the result of a private purchase. The fourth plea raised is one regarding the mesne profits of the

house.

2. To take plea No. 2 first, the question raised is a question of law. The shadow of it had certainly been cast in the pleadings and, I think, the lower Appellate Court was fully justified in considering the plea. There remains the question how far Section 66 of the Civil Procedure Code of 1908, is, or is not, a bar to the suit as brought. The contention of the appellant, as I understand it, is that this is a suit by an heir claiming inheritance to the property left by Musammat Sunder Dei, that Section 66,--if it applies at all,--allows a suit of this kind to be brought under the second Clause of the same section. The contention was that when Musammat Sunder Dei purchased the property in the name of Bhola Nath, the appellant, as her reversioner, could have brought a suit to challenge this act, and she is within her rights in so doing after Musammat Sunder Dei's death. The plea raised is a very ingenious one, but it does not seem to me to be strong enough to take it out of the clear words of Section 66. The first Clause of Section 68 is practically the same as the old Section 316, Clause (1). That clause has been the subject of several rulings by this Court, one of them being a Pull Bench ruling. The words used in Section 317 were the subject of careful consideration by five Judges of this Court, and they arrived unanimously at the conclusion that this section was intended to preclude the institution of a suit against the certified purchaser, by the beneficial owner or the successor-in-title of the beneficial owner. In the present case, the beneficial owner is said to have been Musammat Sunder Dei. The appellant, if she has any standing, is a successor-in-title of the beneficial owner, and unless the Code of Civil Procedure of 1908 has introduced any change, the ruling of this Court holds that she, the appellant, is precluded from instituting a suit against Baldeo. But it is contended that the second Clause of Section 66 enables the suit to be brought. There is no doubt the Act V of 1908 has introduced new words which did not exist in the second Clause of old Section 317. So far, I am with the learned Counsel for the appellant, but I confess considerable difficulty in following him, as he applies the new words to the present case. Is this a case in which a third person is claiming to proceed against property sold ostensibly to a certified purchaser for a benamidar on the ground that he is liable to satisfy a claim of the third person against the real owner? Take it that the real owner was Musammat Sunder Dei. What claim has Musammat Narain Dei against Musammat

Sunder Dei which gives her a right to proceed against this property though ostensibly sold to Baldeo? It is to meet this, that her position as reversioner is put forward. It seems to me that it would require a great deal of twisting to make these words fit in with the claim as now brought. My attention was directed to the case of Achhaibar Dube v. Tapasi Dube 29 A. 557 : A.W.N. (1907) 166. In that case, the finding of this Court was that the purchase was not a purchase made secretly by one person for another,--the ostensible purchaser having no interest in the purchase, and the real purchaser wishing for some reason that his name should not appear. In other words, the finding of the Court was, that it was not a benami purchase. In the present case, however, the contention right through of the appellant--as the lower Appellate Court points out--has been that Baldeo was a benami purchaser for Musammatt Sunder Dei and with her knowledge. An attempt was made to bring the present case within the purview of two rulings of the Madras High Court--Monappa v Surappa 11 M. 234 and Sankunni Nayar v. Narayanan Numbudri 17 M. 282 : 4 M.L.J. 65 and the contention was that Section 66 applies not to purchases made by an agent and does not apply when possession has been transferred. Neither of these views have, at any time, so far as I know, found favour with this Court. There remains the third plea, to the effect, that one-third of the house in dispute was the purchase made at the auction held by the Civil Court and two-thirds were the subject of a private purchase, The purchase is one of a nature similar to that which is made, times out of number, in Civil Court sales. I have been referred to no authority which held that, under circumstances of this kind, namely, where property is sold subject to a lien, that the purchaser purchased one fraction at the Civil Court sale and the remaining fraction when he paid off the lien what the purchaser purchased is the whole of the property, subject to any demands that may be made by the lien advertised at the time of the auction. The appeal fails and is dismissed with costs.