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Court : Chennai

Decided On : Nov-11-1891

Reported in : (1892)ILR15Mad267

Judge : Parker and ;Wilkinson, JJ.

Appellant : Shangara

Respondent : Krishnan and ors.

Judgement :

1. Original Suit No. 610 of 1887 was instituted by the defendant No. 1, the plaintiff's brother, who is alleged by the plaintiff to have been his agent, the property which defendant No. 1 sought to recover in the above suit having been purchased in his name benami for the plaintiff. The question is whether the plaintiff is bound by the decision in that case. The presumption is that the benamidar instituted the suit with the authority and consent of the true owner Gopi Nath Chobey v. Bhugwat Pershad I.L.R. 10 Cal. 697 and the lower Courts have found upon the evidence that the suit was instituted with the knowledge of the plaintiff. He is therefore as much bound by the decree as if he had himself instituted the suit, and the present suit is barred as being res judicata. The plaintiff stood by and permitted his undivided brother to sue for possession. There was nothing to put the person in possession upon inquiry as to who was the real owner, and it is too late now for plaintiff to be allowed to recover on his secret title. The second appeal is dismissed with costs.

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