

Priya Nath Chatterjee and anr. Vs. Lakshmi Narayan Bhattacharjee and anr.

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Court : Kolkata

Decided On : Apr-22-1925

Reported in : AIR1925Cal1139

Appellant : Priya Nath Chatterjee and anr.

Respondent : Lakshmi Narayan Bhattacharjee and anr.

Judgement :

Suhrawardy, J.

1. The facts upon which the present suit was brought by the plaintiff-respondents are these: On the 18th September 1896 and 1st July 1899 one Sashi Bhusan Bhattacharji husband and father of the plaintiffs borrowed certain sums on notes of band from Defendants Nos. 1 and 2. On the 5th December 1902 Sashi Bhusan Bhattacharji and his co-sharers, including Defendant No. 2, executed a deed of crust in favour of two co-sharers, one of whom was Defendant No. 1 Priya Nath Chatterji. Under the deed the trustees took upon themselves the charge of all necessary duties for the management and protection of the joint estate. In December 1903, Sashi Bhusan died leaving a widow Plaintiff No. 2 and two sons Plaintiff No. 1 and one Haladhar who subsequently died childless leaving his mother, the second plaintiff, as heir. On the 3rd April 1904 the defendants Nos. 1 and 2 sued the two sons of Sashi Bhusan on the hand notes and on. the 23rd August obtained a decree' against them as representing the estate of Sashi

Bhusan for Rs. 4,348. This decree was subsequently executed and Sashi Bhusan's share in the property described in the schedules Ka and Kha of the plaint were sold in auction and purchased by Defendants Nos. 1 and 2 (appellants) for Rs. 1,200. On the 31st March 1925 an application made by Plaintiff No. 1 and Haladhar under Sections 244 and 811 of the Code of 1882, was dismissed. The present suit was brought on the 12th September 1918 by the plaintiffs for setting aside the decree and the sale in execution thereof as fraudulently obtained and for recovery of, or, in the alternative, for confirmation of possession of the property in suit. Both the Courts below have agreed in decreeing the plaintiffs' suit, and setting aside the decree and the execution sale held on the 18th of December 1904, not on the ground that the sale was bad under the Code of Civil Procedure but on the ground that Defendant No. 1 being a trustee was not competent to purchase the property. The learned Addl. Dist. Judge, on appeal, found that Defendant No. 2 never acted as trustee to the properties in question. But relying on a certain decision of their Lordships of the Privy Council the learned Judge held that the entire sale was bad and ought to be set aside.

2. The Defendants Nos. 1 and 2 have appealed, and on their behalf several points have been taken. It is first contended that the trust-deed of 1902 did not create such a valid trust as to constitute Defendant No. 1 a trustee in law and make the purchase by him invalid. This point was not taken in any of the Courts below and we do not think that we should allow the appellants to raise it for the first time in this Court. It is a violation of the fundamental principle of estoppel and equity to allow the trustee to raise it after he has taken possession of the properties as trustee and dealt with them in the capacity of a trustee.

3. The next point taken is that the purchase by Defendant No. 1 is not necessarily illegal as he was charged with the management of the properties only and was not a trustee for sale. The law on this point is hardly open to controversy due to the decision of the English Courts and of the Privy Council. In this case of *Manohar Mooher v. Raja Peary Mohan Mookerjee* [1919] 30 C.L.J. 177 it is observed: 'It is equally well settled that a trustee for other purposes than for sale cannot purchase the property where the purchase would conflict with his duty respecting it or his position in regard to it; but in this class of cases there is no absolute rule against

his purchasing the trust property from his cestui que trust, although Courts of equity always regard such transactions with the utmost jealousy and will not hesitate to set them aside if their fairness is not conclusively established.' This case of *Manohar Mookerjee v. Raja Peary Mohan Mookerjee* was taken to the Privy Council A.I.R. 1922 P.C. 235 and their Lordships in affirming the judgment of this Court remarked thus: 'A trustee for sale cannot purchase; he cannot purchase because the same person cannot be both vendor and purchaser; he who acts for another cannot also act for himself. But even if he be not a trustee for sale, if in any capacity he is trustee of the estate, although his incapacity to buy is not absolute and is subject to different limitations it is equally well settled.' In the present case the finding of fact of the Courts below is that the property was purchased at wholly inadequate price. In consideration of the fiduciary relation existing between the parties, and of the fact that the properties were sold at such an inadequate price, and the other circumstances, I think that the decision of the Courts below with regard to the purchase by the Defendant No 1 is correct and must be uphold.

4. It is argued, in the third place, that assuming that the sale of the trust property was bad it did not affect property No. 4 of the plaint inasmuch as it was not included in the trust properties and covered by the trust deed of 1904. The learned Judge has found that property No. 4 described in schedule Kha was taken possession of by Defendant No. 1 as a trust property, who dealt with it and managed it as such and had complete control over it for that purpose. On this finding the defendant must be taken to be a trustee appointed by consent or conduct of the party or as a trustee de son tort. In any view his possession with regard to this property was not in any way different from that in respect of the other property.

5. It is next argued that if the sale is to be set aside and the properties restored to the plaintiffs such restoration must take place on terms on equitable grounds, namely, that the plaintiffs should be held bound to pay the defendants the full amount of the decree, now that the defendant's claim under the decree has been extinguished by lapse of time. On this point also the appellants should not succeed. It was not a transaction between parties one of whom was an honest

party as a bona fide transferee for value without notice. The Defendant No. 1, while holding the position of a trustee, brought the property to sale and purchased it at an inadequate price. On these facts no equity can arise in favour of the Defendant No. 1 and the principle that one who seeks equity must do equity does not apply. The Courts below have, however, decreed that the plaintiffs will pay to the defendants the amount for which the property was sold before they can recover possession of it.

6. The last question raised by the appellants requires more detailed consideration. It is maintained on behalf of Defendant No. 2 that though the purchase of Defendant No. 1 was bad in law the purchase by Defendant No. '2, who was a joint decree-holder with Defendant No. 1, should not be held illegal by the defect in the purchase by the other defendant and should not be set aside. The Court's below have taken the view that the entire sale ought to be set aside. The learned Judge on appeal observes as follows:

The trustee, whether he be a trustee for sale or for other purposes cannot purchase the trust property; and the purchase by him jointly with another person unconnected with the trust is liable to be set aside at the instance of the cestui que trust.' For his reasoning he relied on the decision of the Judicial Committee in the case of *Dhonender Chunder Mookerjee v. Mutty Lall Mookerjee* [1874] 2 I.A. 18. If their Lordships of the Judicial Committee have laid down the law in that case as formulated by the learned Judge, his decision should be upheld. But on a close examination of the case it would appear that their Lordships did not intend to lay down any such broad proposition. It is hardly necessary to remark that a ruling should be construed on the facts on which it is founded. In the case of *Dhonender Chunder Mookerjee v. Mutty hall Mookerjee* [1874] 2 I.A. 18 the facts were that one Shumbhoo Chunder Mookerjee died leaving five sons as executors and residuary legatees. After his death a posthumous son was born of the name of Sreeman Chunder. One of the sons of Shambhdo Chunder, namely Harish Chunder, subsequently died leaving a will under which he appointed his eldest brother Juggut Chunder and second brother Mohesh Chunder as his executors. Juggut did not join in obtaining probate and subsequently renounced executorship and Mohesh remained the sole executor under Harish Chunder's will. Juggut, the

eldest son, as executor of his father's estate, brought a suit and obtained a decree against his father's brother for a sum of Rs. 1,70,000. Thereafter Mohesh, as executor of Harish's estate sold to Juggut Chunder the one-sixth interest of Harish in the decretal amount for a sum of Rs. 5,000. The purchase was made in the name of Juggut, but for the benefit of Juggut himself and Sreeman Chunder. On these facts their Lordships held that the purchase by Juggut, as he was a trustee of Shambhoo's estate to which one sixth share of Harish belonged/was illegal and should be set aside. But it was argued before their Lordships that as Sreeman Chunder was only a party to the purchase through Juggut the purchase by him was not affected by any defect in Juggut's title. In dealing with this question their Lordships made the following observation: ' But if Juggut Chunder, holding the decree in a fiduciary position, could not purchase it for- himself, could Sreeman Chunder employ Juggut Chunder, who held the decree in a fiduciary position, to purchase that decree for the benefit of himself and Sreeman Chunder jointly? It appears to their Lordships that the same objection would apply to Juggut Chunder's purchasing for himself and Sreeman jointly as there would be to his purchasing for himself alone. One of the reasons for setting aside transactions such as this is that the purchaser is presumed from his position, to have better means than the vendor has of ascertaining the value of the property purchased. Well, then, if a person, knowing that another holds a fiduciary position and has a better knowledge of the value than the vendor, employ; that person to purchase for him, and the trustee purchases secretly In his own name for the benefit of that other, it appears to their Lordships that the sale is equally invalid against the parson for whose benefit it is purchased by the trustee as it would be against the trustee him self; therefore it was not necessary in this suit to file a bill to set aside the sale merely a; to half the estate as against Juggut Chunder, and to allow it to stand for the benefit of Sreeman Chunder.' The ground upon which this pronouncement was made is that when purchase is made through a trustee or in the name of a trustee, though for the benefit of a third person, it is as bad as the purchase by the trustee himself because the rule of law which makes the purchase by the trustee for himself bad applies with equal force to the purchase made by him for the benefit of another as in both the oases the trustee takes advantage of his special knowledge and connexion with the property. Upon this decision is

based the statement of law laid down in Lewin's Law of Trust (12th Edition, p. 571): ' As a trustee cannot buy on his own account;, it follows that he cannot be permitted to buy as agent for a third person; the Court can with as little effect examine-how far the trustee has made an undue use of information acquired by him in the course of his duty in one case as in the other.' Dhondender Chunder Mookerjee's case [1874] 2 I.A. 18, therefore, is an authority for the proposition that if a trust property is purchased by the trustee as agent or benamidar of a third person such a purchase cannot be upheld. It does not follow that, where purchase is made by a bona fide purchaser jointly with the trustee, the entire transaction should be set aside on the ground that a part of it is invalid. The learned advocate for the respondent has relied upon this case and several other cases, to which reference will shortly be made, for the broad proposition that, where a purchase is made by a trustee jointly with another person, the whole transaction should be set aside. He has relied in support of his contention also upon the case of *McPherson v. Watt* [1877] 3 A.C. 254. A cursory glance at the judgment of that case may appear to lend some support to the contention of the respondent. But a close examination will show that it did not lay down any such proposition. There were four houses belonging to two ladies. To a solicitor of the name of Mr. John Watt the ladies, through their brother expressed their desire to sell the houses. The solicitor advised them not to advertise the houses in question for sale promising that he would obtain a purchaser. A few days afterwards John Watt presented his brother, Dr. Watt, as a purchaser for a certain price. The purchase was found to have been nominally made by Dr. Watt, but was really made by John Watt himself. The House of Lords held that the purchase was bad and could not be enforced. It was argued at the bar that there was an arrangement between John Watt and his brother that of the four houses two would go to John Watt and two would remain the property of Dr. Watt. It was therefore urged that, so far as the two houses which were to remain the property of Dr. Watt were concerned, the sale should be maintained. Lord Cairns, L.C. in advising the house referred to the proposal made to Dr. Watt by his brother in these words: ' There are four houses to be sold: if you will buy two I will buy the other two and we will get them at such and such a price, so much for your two and so much for my two.' Then the Lord Chancellor proceeds to observe: ' it seems to me that in principle the case is

exactly the same, neither better nor worse than it would have been if in place of Dr. Watt being beneficially interested in two of the houses he had not been interested in any one of them, and the person really interested in the whole had been John Watt, The only further observation I have to make is that even as to the two houses in which Dr. Watt is interested, it seems to me impossible that the sale can be supported; for the sale as between the vendor and the purchaser was one complete and entire sale; and even if you were to separate it into two parts, and to look at it as a sale first of two houses to John Watt and then of two to Dr. Watt. the principle upon which as between John Watt and his brother the price was arrived at was this: that John Watt should have his two houses at one half of the total price and every mischief therefore, which would exist and which would render it impossible that an agent or a person in John Watt's position should purchase for his own benefit, would apply to the mode in which the price was fixed for the houses of which Dr. Watt was the purchaser.' What his Lordship meant to say is that there was a secret understanding between two persons, thus to divide the property amongst themselves, and the advantage taken by the trustee of his special knowledge or connexion with the trust property was not only for the benefit of the trustee but also for the benefit of the other person. If, therefore, the 'purchase is made by the trustee for himself and for another person in the name of the other the sale is not enforceable on the principle that the rule of law which declares a purchase by the trustee to be had applies with equal, if not greater, force to such a case.

7. Reference in this connexion has also been made to the case of *ex parte Forder* [1881] W.N. (Eng) 117. That case has no bearing on the present question and only reiterates the principle that the purchase made by a trustee for himself and another in whom he is interested is as bad as if it was made for himself. There the purchase was made in the name of the trustee's son who was a minor and a nephew of the trustee's partner in business. On these facts the Court held that the case fell within the principle of the cases which have decided that an assignee in bankruptcy cannot sell the bankrupt's estate to his partner in business or his solicitor. The sale would, therefore, be void as contrary to the principle of the law even independently of the fact that one of the purchasers was a minor and legally incapable of entering into a contract. From tills case Lewin in his book on trusts

draws the following proposition. 'That a partner of a trustee or any person from whom he may directly or Indirectly derive benefit by reason of the purchase cannot purchase a trust property from the trustee.' In the case of *Farrar v Farrar* 40 Ch. D. 395, property was sold by the mortgagee to a corporation of which he was a member. It was argued by the plaintiff that the sale was invalid as it was a sale by a mortgagee to himself under the guise of a limited company. Lindley, L. J., in examining this argument observed thus. 'A sale by a person to a corporation of which he is a member is not either in form or in substance, a sale by a person to himself. There is no authority for saying so. To hold that it is would be to ignore the principle which lies at the root of the legal idea of a corporate body and that idea is that the corporate body is distinct from the persons composing it. A sale by a member of the corporation to the corporation itself is in every sense a sale valid in equity as well as at law. There is no authority for saying that such a sale is not warranted by an ordinary power of sale, and 'in our opinion such a sale is warranted by such a power and does not fall within the rule to which we have at present referred. But although this is true, it is obvious that a sale by a person to an incorporated company of which he is a member may be invalid on various grounds although it may not be reached by the rule which prevents a man from selling to himself or to a trustee for himself. Such a sale may, for example, be fraudulent and at an under value or it may be made under circumstances which throw upon the purchasing company the burden of proving the validity of the transaction and the company may not be able to prove it. Fraud in the present case is not now alleged; it was alleged in the Court below and was there clearly disproved. But for reasons which will appear presently the circumstances attending the sale were such as in our opinion throw upon the company the burden of sustaining the transaction.' This decision in my opinion lends some support to the appellant's contention that the purchase from the trustee by another person does not necessarily invalidate the transaction, but there may be circumstances which will throw burden upon such other person to prove that he was a bona fide purchaser for value and it may be difficult for a Court of equity to sustain the transaction.

8. No case has been cited which may have direct bearing upon the facts before us. In this case the debt was contracted before the trust was created. To recover

that debt; a suit was brought and a decree was regularly obtained. The property was brought to sale in execution of that decree and purchased by the Defendant No. 2. With regard to the character of this purchase both the Courts agree in finding that the decree and the sale were not vitiated by fraud and were regular in all respects. That being so, the purchase by Defendant No. 2 can only be set aside, if it can be established in law that; a purchase jointly with the trustee at an auction in execution of a decree is bad in law. It is not a case in which the trustee was the seller. It is a case in which the property was sold through the intervention of the Court in public auction, although the trustee was one of the parties to the execution. So far as Defendant No. 2 is concerned he is not affected by the infirmity in the title of his co-purchaser. He had a decree in his favour which he was entitled to execute. His co-decree-holder joined with him in executing the decree. There was no duty cast upon him either in law or in equity to see that the co-judgment-creditor did not purchase the property. If the property is purchased by two persons one of whom owing to some inherent incapacity in him or owing to his original relation with the property is incapable of acquiring any title to it there is no reason why the title of the other purchaser should be affected by reason of the incapacity of the co-purchaser.

9. It is also argued in this connexion that the sale should not be partially set aside but if it is set aside so far as Defendant No. 1 is concerned, the entire sale ought to stand cancelled. This argument, I suppose, is based on the use of the words 'setting aside' in connexion with this case. The Courts below have also loosely used the same expression and they held that the purchase by defendant is liable to be set aside. The expression 'set aside' in this connexion is not to be understood in the sense in which it is used in Order 21, Civil Procedure Code. The effect of the decision so far as the Defendant No. 1 concerned is that the sale of the property to him is inoperative, ineffectual and unenforceable against the plaintiffs to the extent of his share. As the shares of the purchasers in respect of the property purchased are not defined it may be presumed that they have one-half share each. The sale so far as the half share of Defendant No. 1 is concerned must, therefore, be held to be inoperative against the plaintiff; and the purchase by Defendant No. 2 should prevail.

10. In the above view the appeal should be allowed in part, the decree of the Court below be set aside so far as it affects the interests of Defendant No. 2 to the eight annas of the properties in suit. The suit of the plaintiff as against Defendant No. 2 to the extent of eight annas of the properties In suit will stand dismissed. The decree of the lower appellate Court will be varied in the manner following. The plaintiffs will pay to Defendant No. 1 Rs. 600 and the plaintiffs should recover possession of a half share of the properties in suit jointly with Defendant No. 2. The Defendant No. 1 will pay half of the costs of the. suit in all the Court 3 to the plaintiffs and Defendant No. 2 will recover half costs from the plaintiffs in all the Courts.

Duval, J.

11. The two chief points in this appeal appear to me to be these: (1) whether Defendant No. 1's purchase will stand and (2) whether Defendant No. 2's purchase will stand. Now, the finding of fact is that Defendants Nos. 1 and 2 jointly lent money to the predecessor of the plaintiff;, obtained a decree after his death and purchased the property for the sum of Rs. 1,200, admittedly a most inadequate price for the property purchased. Another finding is that undoubtedly at the time of his purchase Defendant No. 1 was the trustee of the estate, and that Defendant No. 2 was not the trustee at all. It is also found as a matter of fact that there was no irregularity in obtaining the decree or in the conduct of the sale so as to justify the sale being set aside on ordinary grounds. The question then arises whether in view of the fiduciary relations existing between plaintiffs and Defendant No. 1 the sale be declared void as regards him. As to that, the law appears to me to be perfectly clear. The trustee is not absolutely debarred from buying his cestui que trust's property but the Court will look on such sale with the greatest suspicion and if there is the slightest doubt about its genuineness, it will set it aside. The finding of fact here is that the property was sold at a grossly inadequate price. That to my mind is sufficient to make the purchase of Defendant No. 1 a nullity. As to Defendant No. 2, he was not a trustee. In fact he was co-cestui quet rust with the plaintiffs and there is nothing to show that he used Defendant No. 1, who was the trustee, for the purpose of purchasing the property. A large number of cases have been cited before us but they do not cover the present case. In the present case

the Defendant No. 2 is perfectly independent person though he undoubtedly joined with Defendant No. 1 in the purchases at auction; he was, however, neither an assignee nor a benamidar of Defendant No. 1 and ha purchase I as an ordinary member of the public in the ordinary course of business. In this view I do not see how the sale so far as he was concerned can, in the circumstances of this case, be set aside. None of the oases cited goes so far as to say that merely because the purchase is joint therefore it should be set aside in so far as a purchaser such as he is found to be concerned. In this view I agree with the judgment just delivered by my learned brother.

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