Privy Council Appeal No. 1 of 1927.

Balaram and others - - - - - - *Appellants*

v.

Naktu and others - - - - - - - *Respondents*

FROM

THE COURT OF THE JUDICIAL COMMISSIONER, CENTRAL PROVINCES.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 19TH JANUARY, 1928.

Present at the Hearing :

VISCOUNT SUMNER.
LORD ATKINSON.
LORD SINHA.
SIR JOHN WALLIS.

[*Delivered by* LORD SINHA.]

This is an appeal from a judgment and decree of the Court of the Judicial Commissioner of the Central Provinces reversing a judgment and decree of the Court of the Additional District Judge of Bhandara in Suit No. 63 of 1921.

The facts out of which the suit arose are as follows :

Mauza Chulod in Perganna Kampta, District Bhandara, C.P., was put up for auction sale by the Collector under a decree obtained by R. B. Indraraj Bhao, Zemindar of Kampta, against the sub-proprietors of Chulod who had failed to pay him the revenue, cesses and malikana payable by them under the C.P. Land Revenue Act. On the 28th October, 1907, it was knocked down to Naktu for Rs. 3,810, of which Rs. 1,000 was paid at once and Rs. 2,810 on the 12th November, 1907. The sale was confirmed in due course on the 5th December, 1907, and sale certificate issued to Naktu, who was put in possession by the Court Officer, on the 5th June, 1908.

On the 27th October, 1919, *i.e.* just one day short of 12 years after the auction sale, one Bhikha filed this suit, being suit No. 63

of 1921, in the District Court of Bhandara against Naktu and his sons, alleging that he was the real purchaser, that both the sums which made up the purchase money were found by him and that Naktu, his brother-in-law (sister's husband) was his agent in the matter of the purchase, and though instructed to purchase the property in his, *i.e.* Bhikha's name, had purchased it in his own ; also that before the balance of the purchase money, viz., Rs. 2,810 was paid by him, Naktu wrote him a letter dated the 4th November, 1907, promising to convey the property to him whenever asked to do so.

Certain other events happened between the auction sale of Chulod and the institution of this suit, which it is necessary to state as they were relied upon by Bhikha as giving him a separate and independent cause of action. Some of the sub-proprietors of Chulod had mortgaged in 1902 their share of 9 annas 6 pies in the village Chulod, together with their right to cultivate Sir land comprising 87·94 acres and Khudkast 13·28 acres to one Jagannath Marwari. The latter obtained a conditional decree for foreclosure on that mortgage on the 13th December, 1906, for Rs. 4,319 5 annas 2 pies. This decree was purchased by Bhikha on 22nd October, 1907, and the decree was made absolute on the 30th March, 1909. There were further proceedings in connection with the foreclosure between Bhikha and the mortgagors. In the end it was held that Bhikha having himself become *benami* purchaser of 9½ annas share in the village under Indraraj Bhao's decree, the mortgage debt should be apportioned and the mortgagors held liable only for Rs. 1,787. 2.2 payable in respect of the Sir lands of 87·94 acres which did not pass under the *benami* purchase. As the mortgagors defaulted in paying this latter sum, the foreclosure decree was made absolute.

By his written statement in the present suit, Naktu denied that he purchased the village on behalf of or with the moneys advanced by Bhikha. He asserted that after obtaining possession by virtue of his sale certificate he remained in possession of the village collecting the rents and paying all the outgoings in respect thereof. He denied the genuineness of the letter dated the 4th November, 1907, and he further denied that Bhikha obtained any such title to a 9½ annas share of the village by the foreclosure decree above mentioned as would entitle him to redeem. As regards the Sir lands of 87·94 acres, he disclaimed any interest therein, and asserted that he was in no way responsible for the entry in the Settlement Records with regard thereto.

In spite of the allegation in the plaint that Naktu had purchased the village in his own name and contrary to the directions given to him by Bhikha, no evidence was adduced with regard thereto, and in the Trial Court (as well as in the Appellate Court) the basis of Bhikha's case was that Naktu's name was entered in the sale certificate with his consent. This is tantamount to the purchase being *benami*, and both Courts held that Bhikha was precluded by Section 66 of the Code of Civil Procedure from

claiming the property on the ground that Naktu was not the real purchaser.

But he claimed specific performance of the agreement which he alleged was evidenced by the letter dated the 4th November, 1907. The Trial Court held that the letter was genuine and decreed specific performance on the basis thereof. The Appellate Court came to the conclusion that even if it was taken as proved that Bhikha borrowed the money that was paid for the village and handed it over to Naktu for payment, the letter dated the 4th November, 1907, was not a genuine document even though Naktu had not gone into the witness box to deny his signature to that letter.

On a consideration of the whole evidence, their Lordships are unable to differ from the conclusion arrived at by the learned Judicial Commissioners. The only evidence in support of the authenticity of the letter is that of the two sons of Bhikha, who were extremely young at the time when the letter is said to have been received, and is altogether unconvincing. The Judicial Commissioners considered that the letter produced did not have the appearance of one that has been lying in a Pawar Patel's house for 12 years, and the English date appearing on it is itself a ground for great suspicion. Nor is there any explanation suggested why, if such a letter had been in existence, Naktu was never called upon to execute a conveyance or deed of release in respect of the village. But the most unsatisfactory part of the case of the purchase having been made originally on behalf of Bhikha lies in the uncontradicted evidence on behalf of the defendant that ever since the date of the purchase he, Naktu, collected the rents and paid the outgoings in respect of the village and appropriated the balance as his own profit. The Trial Court, while accepting this latter evidence, considered that Naktu had been allowed to enjoy for his own benefit the difference between the rental collections and the Land Revenue as a fair remuneration for his services. This was not the plaintiffs' case and the Appellate Court rightly rejected this inference and held that it was impossible to believe that if Bhikha was the real purchaser he would have been willing to forgo the income of the whole village for an indefinite period, which extended in fact to 12 years short by one day.

Their Lordships have come to the conclusion that there is grave reason for doubting the genuineness of this letter and that in any event such promise as there is in it is not supported by any consideration, and that the claim for specific performance, which was the only claim allowed by the Trial Court, was rightly held to fail by the Appellate Court.

There remains only the last ground urged before this Board on the basis of such title as Bhikha obtained under the foreclosure decree against some of the shareholders in the village. This claim was not apparently pressed either before the Trial Court or the Appellate Court. Their Lordships have however considered it on

such materials as there are on the record and have come to the conclusion that under that foreclosure decree all that Bhikha obtained was what is called the ex-proprietary title of the 9½ annas shareholder to 87·94 acres of Sir land. The fact that his title to the whole village as *benami* purchaser was asserted by the defendants and acquiesced in by them does not avail him to establish that title in this suit even with regard to the 9½ annas share or to base any claim for redemption on such title.

In the result this appeal fails and their Lordships will humbly advise His Majesty that it should be dismissed with costs.

In the Privy Council.

BALARAM AND OTHERS

v.

NAKTU AND OTHERS.

DELIVERED BY LORD SINHA.

Printed by
Harrison & Sons, Ltd., St. Martin's Lane, W.C.2.

1928.