

Privy Council Appeal No. 39 of 1923

Bengal Appeal No. 20 of 1921.

Srimati Nagendrabala Dasi and another - - - - *Appellants*

v.

Dinanath Mahish and others - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 29TH NOVEMBER, 1923.

Present at the Hearing :

LORD DUNEDIN.

LORD PHILLIMORE.

SIR JOHN EDGE.

MR. AMEER ALI.

SIR LAWRENCE JENKINS.

[*Delivered by* LORD DUNEDIN.]

In 1901 certain persons, among whom were the respondents borrowed a sum of Rs. 19,999 from the Raja Narendra Lal Khan Bahadur and executed a mortgage in favour of his wife, Rani Marinalini Debi. In 1906 the Rani put the mortgage in suit. Defences of various kinds were entered. The male appellant in this case acted as pleader for all the defendants and on their behalf effected a compromise of the suit. This compromise was dated the 19th February, 1907. Payments under the compromise not having been duly made, the Rani proceeded to execute afresh and some properties were sold, but eventually and before the decree was fully executed the Rani, on the 7th February, 1915, sold the unexecuted decree for Rs. 11,500 to the female appellant, who is the wife of the male appellant. Thereafter the female appellant proceeded to execute the decree. Objections were made by several of the judgment-debtors. It is not necessary

for the purposes of the present appeal to follow minutely the progress of the execution proceedings. It is sufficient to state that some of the properties were brought to sale and that the female appellant, on the 18th February, 1918, obtained leave to bid and that she herself purchased certain properties at the sale.

The present suit was raised by the judgment-debtors to have it declared that the purchase of the unexecuted decree was really a purchase *benami* of the male appellant; that it was therefore bad as a purchase by a pleader of the property in suit with concealment of the fact that he was the real purchaser and praying for appropriate relief.

The Subordinate Judge found that the purchase was *benami*, and ordered a reconveyance of the decree to the plaintiffs on payment of Rs. 13,750, being the amount paid on the transfer of the decree plus certain sums which had been paid to save the property from being taken for other executions. The High Court so far affirmed the judgment, but added that the defendants must also convey the properties purchased by the female defendant at the sale in execution of the decree.

As both Courts had found that the purchase of the decree by the wife was truly *benami* for the husband, who was at that time the pleader, the appellants were obliged to accept this fact. Their argument, however, came to this:—They admitted that the result is that they are bound to surrender the unexecuted decree to the respondents at the price they paid for it; but they say that the decree was a good decree in their hands and that sales actually effected under it must stand. At the time of the sales of the properties in question the male appellant had long ceased to be pleader; the respondents were represented by other pleaders, and it was not said that any knowledge he had obtained while he acted as pleader was in any way conducive to his action in buying the properties through his wife when the properties were offered for sale upon the execution of the decree.

Their Lordships have carefully considered this argument, but they do not think that in the circumstances it is good. Had the purchase of the properties been open and above board by the male appellant the result might have been otherwise, for the disability attaching to him as pleader which would have prevented him cannot exist indefinitely, and provided he had not availed himself in any way of knowledge gained in his position of pleader, there would have been nothing to prevent his acquiring the property of his *quondam* clients. The consequences which ensue from a person in a confidential position making use of that position to obtain an advantage over the person with whom he is in confidentiality are embodied in Section 88 of the Trusts Act. That Act does not apply to the part of India with which there is here concern, but the ordinary equitable conditions which are applicable come to the same result. Now there is no more certain way of taking advantage than the way of concealment. The

matter is expressed very clearly by Lord Chancellor St. Leonards in *Lewis v. Hillman*, 3 H.L.C., at p. 630 :—

“ I should lay it down as a rule that ought never to be departed from that if an attorney or agent can show he is entitled to purchase, yet if instead of openly purchasing he purchases in the name of a trustee or agent without disclosing the fact, no such purchase as that can stand for a single moment.”

And the same doctrine is repeated in the later case of *McPherson v. Watt*, 3 App. Cas. 254, where at p. 266 Lord O'Hagan lays down the conditions which must exist to validate a purchase by an attorney from his client, and adds :—

“ And although all these conditions have been fulfilled, though there has been the fullest information, the most disinterested counsel and the fairest price, if the purchase be made covertly in the name of another without communication of the fact to the pleader the law condemns and invalidates it utterly. There must be *uberrima fides* between the attorney and the client, and no conflict of duty and interest can be allowed to exist.”

These *dicta* are not directly applicable here because the buying of the decree was not a contract between the pleader and the persons with whom he was in confidentiality, but between him and the Rani. But such advantage as he secured he must give up. This is admitted by the appellants so far that they admit he must surrender the decree for what he gave for it. But having got the decree, what use did he make of it? He allowed his wife to get leave to bid and then to purchase. Now here again there was concealment. Had the Judge been told that the wife really held *benami* for the pleader, who had had no business to acquire the decree, their Lordships cannot doubt that the leave to bid would have been refused. That an advantage was got by the pleader being allowed to bid under colour of his wife's name and then to buy, their Lordships cannot doubt, for otherwise the point would not be contested. They therefore come to the conclusion that the second deception vitiates the sale also; that consequently the male appellant cannot be allowed to keep the purchase made in name of his wife and that the judgment of the Appeal Court was right. The result is that this appeal must be dismissed with costs, and their Lordships will humbly advise His Majesty accordingly.

In the Privy Council.

SRIMATI NAGENDRABALA DASI AND ANOTHER

vs.

DINANATH MAHISH AND OTHERS.

DELIVERED BY LORD DUNEDIN.

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