

Allahabad High Court

Abdul Bari vs The Uncovenanted Service Bank ... on 3 July, 1896

Equivalent citations: (1896) ILR 18 All 461

Author: B A Aikman

Bench: Banerji, Aikman

JUDGMENT Banerji and Aikman, JJ.

1. The suit in which this appeal has arisen was brought by one Abdul Bari for a declaration that certain property which the appellant caused to be attached as the property of Abdullah, the judgment-debtor of the appellant Bank, was property which had been purchased at auction by the plaintiff Abdul Bari and belonged to him. The defence to the suit was that Abdullah was the real purchaser of the property and that Abdul Bari was only benami for him. This defence succeeded in the Court of First Instance, but the learned Judge of the Lower Appellate Court overruled it on the ground that a suit brought by the present defendant for a declaration that the auction-purchaser was not the beneficial owner could not be maintained, and that consequently it was not open to the defendant to make such an assertion in answer to the plaintiff's claim. Although the learned Judge did not refer to Section 317 of the Code of Civil Procedure, he evidently based his opinion on what he considered to be the meaning of that section. In our opinion the view taken by the learned Judge was erroneous and was not warranted by the provisions of Section 317. That section forbids a suit by a person claiming to be the beneficial owner against the certified purchaser except on the ground of fraud. There can be no doubt that the section contemplates a suit between the certified purchaser and the person claiming to be the beneficial owner, and not a suit like the present, in which a third party asserts that the certified purchaser was not the beneficial owner. This was the view taken by this Court in *Sohun Lal v. Lali Gya Pershad N.W.P. H.C. Rep. 1874, p. 265*, which was followed in *Puran Mai v. Ali Khan I.L.R. 1 All. 235*. The same view was held by the High Court of Calcutta in *Subha Bibi v. Hara Lal Das I.L.R. 21 Cal. 519*. We allow the appeal, and, setting aside the decree of the Lower Appellate Court, remand the case to that Court under Section 562 of the Code of Civil Procedure with directions to readmit the appeal under its original number in the register and to determine it according to law. Costs to abide the result.