*Privy Council Appeal No.* 37 *of* 1920.
*Bengal Appeals Nos.* 34 *and* 37 *of* 1919.

**Raja Peary Mohan Mukerji** - - - - - - *Appellant*

*v.*

**Monohar Mukerji and others** - - - - - *Respondents.*

**Kumar Bhupendra Nath Mukerji** - - - - - - *Appellant*

*v.*

**Same** - - - - - - - - - *Respondents.*

(*Consolidated Appeals.*)

FROM

**THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.**

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 19TH APRIL, 1921.

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*Present at the Hearing;*

LORD BUCKMASTER.
LORD DUNEDIN.
LORD SHAW.
SIR JOHN EDGE.
MR. AMEER ALI.

[*Delivered by* LORD BUCKMASTER.]

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Many questions were originally involved in the dispute which has given rise to this appeal, but of these two only remain. The first relates to the continuance of the appellant Raja Peary Mohan Mukerji in the office of Shebait to the debottar estate of Sri Sri Iswar Gopaleswar Shiva Thakur and Sri Sri Iswar Shridhar Thakur, and the second to the purchase in January, 1913, of a certain Lot known as Lot Bahirgora, which was sold in execution under circumstances to which their Lordships will briefly refer.

By his Will, dated the 11th September, 1840, Jaga Mohan Mukerji dedicated certain properties to the worship of the two Thakurs established by him, for the annual celebration of the Durga Puja, the Sradh of ancestors, and other pious usages, the Will providing for the order of succession to the office of the

Shebait among the testator's own descendants. The testator died shortly after the execution of his Will, and in September of 1890 the succession to the Shebaitship opened, owing to the death of the then Shebait. Disputes arose as to who was the true successor, which resulted in a decree of the 29th January, 1894, that one Bijoy Krishna was the rightful Shebait, but on the day of the decree he died. Further litigation then ensued between the sons of Bijoy Krishna and the Raja who is the appellant in the first of these appeals, which ultimately resulted in a decree of the 30th June, 1903, made by the Subordinate Judge in favour of the sons of Bijoy Krishna for Rs. 45,960, which sum it was ordered should be recovered by the plaintiffs out of the debottar estate in the hands of the Raja as its Shebait. Appeals were taken from this judgment to the High Court, and again from the High Court to His Majesty in Council, but these appeals failed. Execution proceedings were then instituted in order to secure a sale out of the debottar estate of the Lot that is now in dispute, and on the 14th January, 1913, the said Lot was sold at a public Court sale for Rs. 1,56,600 to the appellant in the second appeal, who is the son of the Raja.

On the 17th February, 1913, proceedings were taken by Monohar Mukerji, who is the first respondent to these appeals, asking among other things for the removal of the Raja from the office of Shebait and for an order to set aside the purchase of the estate. The Subordinate Judge dismissed the suit, but he held, contrary to the contention of the Raja's son, that the purchase was benami and made with the Raja's money for his benefit. An appeal was taken from the decree following this judgment to the High Court of Calcutta and was allowed. The High Court supported the view that the sale was in fact benami for the Raja who held a fiduciary position in relation to the estate, and they held that in these circumstances the purchase could not be supported. They also decided that the Raja should cease to be Shebait and that the management of the estate should be vested in a Receiver to be appointed by the Court. A decree was accordingly drawn up carrying out these views, and from this decree both the Raja and his son have brought the present appeals, which have been consolidated by an Order in Council.

Upon the question of the removal of the Raja, the learned Subordinate Judge thought that there was no sufficient charge of misconduct to justify his removal; but the High Court took a different view, and thought that the protracted litigations by which the estate had become heavily burdened with debts, and the circumstances associated with the claims which he was seeking to establish against the estate for litigation expenses, were such as to render it undesirable that he should continue in the office. They also found that the purchase could not be sustained. Their Lordships are not prepared to interfere with these conclusions. The grounds for removing a Shebait from his office may not be identical with those upon which a trustee would be removed in

this country. The close intermingling of duties and personal interest which together make up the office of Shebait may well prevent the closeness of the analogy, but as part of the office it is indisputable that there are duties which must be performed, that the estate does need to be safeguarded and kept in proper custody, and if it be found that a man in the exercise of his duties has put himself in a position in which the Court thinks that the obligations of his office can no longer be faithfully discharged, that is sufficient ground for his removal. It is this that forms the foundation of the judgment of the High Court, and the appellant has not satisfied their Lordships that the facts were misinterpreted or the reasoning unsound.

Upon the remaining question also their Lordships think that the High Court was right. The argument in favour of the appellant here also turns upon the dissimilarity between the office of Shebait and the ordinary office of a trustee. A trustee for sale cannot purchase: he cannot purchase because the same person cannot be both vendor and purchaser, and 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 established. A trustee may indeed acquire from beneficiaries who are *sui juris* an estate in which they are interested, but he can only do this if he has made the fullest disclosure to them of all the relevant and material facts within his knowledge affecting or that might affect the value and condition of the estate and the parties are at arm's length, the *cestui que trust* knowing that he is dealing with the trustee. Otherwise the purchase is bad, and it is bad because any person who occupies a fiduciary relationship may be able by virtue of his position to acquire information with regard to the trust estate which he is not permitted to use for his own benefit. Their Lordships recognize the force of the argument that points out the dissimilarity between a Shebait and trustees to whom this rule applies. There is no doubt that the word "trustee" covers a very large number of relationships, involving different obligations; the word "trust," therefore, may be so used that it is intended to apply only to one class of such duties; and it follows that rules and decisions which depend upon the special conditions attached to the particular class would not of necessity apply to another where these conditions did not exist. The rule forbidding the purchase of an estate by a person who stands in regard to his dealings with it in a fiduciary relationship is, however, general in its application. In the case of *Nugent* v. *Nugent* (1907, 2 Ch., 292), it was held that a Receiver appointed by the Court cannot purchase the property of which he is Receiver without the leave of the Court, even where the sale is not made in the action in which he was appointed, but by a mortgagee selling with leave outside the suit. Their Lordships think that this was a correct decision and shows the wide area of dispute which is covered by the rule.

Further, in the present case it is now established by two concurrent findings of fact that the Raja purchased the property benami in the name of his son, and by this means concealed the fact that he was the real purchaser; their Lordships bear in mind that such classes of purchase are very common in India and are due to many considerations which may not find their counterpart here, yet none the less they can easily be made a cloak and cover for improper and even dishonest transactions, and they think the rule laid down by Lord St. Leonards in *Lewis* v. *Hillman* (1852, 3 H.L.C., 607) that even if an attorney or agent can show that 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, should apply to this case.

Their Lordships have not overlooked the fact that in the present instance the purchase was for an abundant price, one that is said to be largely above its market value, but such considerations cannot have weight where the purchase is challenged upon the grounds in the present suit.

It is unnecessary to examine further in detail the law upon this matter, for it is fully, and in their Lordships' opinion accurately, analysed in the judgment of the High Court, where the relevant authorities are quoted and properly applied. They think, therefore, that this appeal must fail and that an order must be made declaring that the purchase by the second appellant was invalid and that proper and necessary steps should be taken to secure the property; and that the first appellant is entitled, subject as herein mentioned, to repayment of the purchase money. An account should be directed showing what, if anything, is due from the first appellant to the estate, and such money should be deducted from the purchase moneys, the balance, if any, of the moneys in Court to be paid out and the first appellant to have a charge on the estate for such sum. The appellants will pay the costs of the appeals.

They will humbly advise His Majesty to this effect.

**In the Privy Council.**

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RAJA PEARY MOHAN MUKERJI

*v.*

MONOHAR MUKERJI AND OTHERS.

KUMAR BHUPENDRA NATH MUKERJI

*v.*

SAME.

(*Consolidated Appeals.*)

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DELIVERED BY LORD BUCKMASTER.

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