

*Judgment of the Lords of the Judicial Committee  
of the Privy Council on the Appeal of Po-  
reshnath Mookerjee v. Anathnath Deb, from  
the High Court of Judicature at Fort William,  
in Bengal; delivered May 11th, 1882.*

Present :

SIR BARNES PEACOCK.

SIR ROBERT P. COLLIER.

SIR RICHARD COUCH.

SIR ARTHUR HOBHOUSE.

THE question in this Appeal, which is from a decision of the High Court at Calcutta on an appeal from the District Court, is stated by the learned Chief Justice in giving the judgment of the High Court, in which he says:—  
“ The point upon which, in our opinion, this case  
“ should be decided is rather of a peculiar nature.  
“ The Plaintiff is the zemindar of a share in a  
“ property called lot Shahalumpore, and he also  
“ claims to be the dur-putnidar of a portion of  
“ the same property. In his character of  
“ dur-putnidar, he brings this suit against the  
“ Defendant No. 1,”—Bishtoo Chunder Roy,  
—“ as ijardar of part of the estate for rent  
“ and for road-cess. The Defendant resists the  
“ claim upon the ground that Poreshnath, the  
“ Defendant No. 2, is the real owner of the dur-  
“ putni; and the Defendant No. 2 has intervened  
“ for the purpose of supporting his title to the  
“ rent as against the Plaintiff. It appears that  
“ sometime ago, in the year 1259 (A.D. 1852),  
“ one Ishan Chunder purchased and was the un-  
“ doubted owner of this dur-putni estate. In the

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“ year 1265 ” (A.D. 1858), Ishan “ Chunder,  
 “ being in difficulties, sold or professed to sell  
 “ the dur-putni to his wife Kripamoyi and his  
 “ son Dhun Krishna ; and thereupon the names  
 “ of Kripamoyi and his son Dhun Krishna  
 “ were entered in the Plaintiff’s serishta as the  
 “ owners of the duri-putni.” It has been sug-  
 gested that this is not correct; there is a  
 question whether it was in the Plaintiff’s  
 serishta, but it is not material:—“ After this  
 “ sale, the rent of the dur-putni being in  
 “ arrear, the Plaintiff (whether in ignorance of  
 “ the sale or not does not appear) brought a  
 “ suit for the rent against Ishan Chunder, who  
 “ defended the suit upon the express ground that  
 “ he was no longer the tenant, and that he had  
 “ parted with his interest in the dur-putni to his  
 “ wife and son; and he not only defended the  
 “ suit on this ground, but he stated in his  
 “ evidence that the sale to his wife and son was  
 “ an absolute and *bonâ fide* one; that the dur-  
 “ putni really belonged to them, and that he had  
 “ no right or interest in it.”

It appears from what has been stated by the  
 learned Counsel for the Appellant that in this  
 suit Ishan Chunder put in a written statement  
 to this effect on the 7th November 1872, and  
 the suit was dismissed on the 18th November  
 1872. The learned Chief Judge proceeds:—  
 “ Upon the strength of this evidence Ishan  
 “ Chunder defeated the Plaintiff’s suit, and the  
 “ Plaintiff had to pay the costs of it. Having  
 “ failed in that suit, the Plaintiff then brought  
 “ another suit for the same rent against Kripa-  
 “ moyi and Dhun Krishna. He obtained a decree  
 “ against them, and under that decree the dur-  
 “ putni was sold, and the Plaintiff himself became  
 “ the purchaser of it. Upon the title thus ac-  
 “ quired the Plaintiff brings the present suit  
 “ against the Defendant No. 1,”—Bishtoo

Chunder Roy,—“ the ijardar of that portion of the  
 “ property ; and assuming that the title derived  
 “ in this way is a good one, there is no doubt as  
 “ to his right to recover the rent as against the  
 “ Defendant No. 1.” Then the learned Chief  
 Justice alludes to the question of the amount to  
 be recovered which the Appellant was willing  
 to give up, and, in order to avoid the necessity  
 of a remand, says :—“ Consequently the only  
 “ point for our consideration is, whether the  
 “ Plaintiff on the one hand, or the intervening  
 “ Defendant on the other, is entitled to the  
 “ rent of the dur-putni. The claim which  
 “ the intervening Defendant sets up is by right  
 “ of Ishan Chunder. He says that Ishan  
 “ Chunder mortgaged the property to him, and  
 “ that such proceedings have been taken upon  
 “ that mortgage that he is now entitled, in Ishan  
 “ Chunder’s rights, to the rent of this property  
 “ as the owner of it.”

The proceedings thus alluded to were these :  
 On the 11th January 1873, about three months  
 after the written statement had been put in by  
 Ishan Chunder and the suit had been dismissed,  
 a mortgage bond was given by Ishan Chunder  
 to Poresnath, who brought a suit upon it and  
 obtained a decree on the 6th September 1875 ;  
 which Mr. Leith, who was counsel for the  
 Appellant, stated, although the form of the  
 decree does not appear, was the ordinary  
 decree as upon a mortgage bond. On the  
 13th September 1875 he obtained an order for  
 sale in execution of that decree, and the sale  
 took place on the 18th December 1875, being  
 a sale of the right, title, and interest of Ishan  
 Chunder, and Poresnath became the purchaser  
 for the sum of 5,600 rupees. The certificate  
 of sale was granted on the 24th March 1876,  
 and in that it is stated that Poresnath pur-  
 chased the property for Rs. 5,600, and had put

in a receipt crediting the amount of consideration against the decretal amount receivable by him. In fact, he did not pay any money upon the purchase which he had made at the sale, but became the owner of the property in satisfaction of his mortgage. It was decided by the First Court that the intervening Defendant had a right to go into the question whether Ishan Chunder were the real owner of the dur-putni or not, and that Court found upon the evidence that the sale by him to his wife and son was a benamee transaction, and that Ishan Chunder was the owner. Consequently the question really is, whether Poreshnath is estopped by the written statement which Ishan Chunder made in the former suit. The learned Chief Justice says:—"It appears to us that, inasmuch as the intervening Defendant claims under Ishan Chunder, and can take no better title than Ishan Chunder himself, and as Ishan Chunder has directly induced the Plaintiff to believe that he had sold his property absolutely to his wife and son and led him to bring a suit against them for the rent, and under the decree obtained in that suit to purchase their interest in the property, it does not lie in the mouth of Ishan Chunder, or any one claiming under him by a subsequent title, to set up a claim to the rent in this suit. as against the Plaintiff."

Their Lordships think that is a right conclusion; that, looking to what took place, Poreshnath cannot be considered as having put himself, by reason of his purchase at the sale which he had brought about in execution of his decree on the mortgage bond, in a better position than he was in as mortgagee taking from Ishan Chunder. It is admitted that, if he had claimed as a mortgagee or as an assignee of Ishan Chunder, he would be estopped; and their

Lordships think that he is substantially in the same position, that he did not by purchasing in this way put himself in a better position, and consequently that he is estopped by the statement which Ishan Chunder made, and that the decree of the High Court is correct.

Their Lordships will therefore humbly advise Her Majesty to dismiss the Appeal; and the costs thereof will be paid by the Appellant.

