

APPELLATE CIVIL.

Before Teunon and Newbould JJ.

RAJANI KANTA DAS

v.

PURNA CHANDRA KUNDU.*

*Fraud—Suit to set aside a Small Cause Court decree for fraud, if lies—
Allegation that case false and proved by perjured evidence.*

A Small Cause Court decree is not final in the sense that it may not be set aside on the ground of fraud by a separate suit.

Where, as in the present case, it has been found not merely that the decree was obtained by perjured evidence but also that the suit or claim was a false suit or claim and the falsity of the claim was necessarily known to the party putting forward the claim :

Held, that the decree in question had been properly set aside.

Maninda Nath Mitra v. Hari Mondal (1) referred to.

SECOND appeal by the defendant in a suit to set aside a Small Cause Court decree for money on the ground that the plaintiff's claim was false and that the plaintiff obtained the decree fraudulently by means of forged papers after suppression of summons. The defendant denied the plaintiff's allegations. The first Court found that the summons was duly served on the defendant, the present plaintiff, and this finding has not been challenged. That Court also on the evidence touching the merits of the case, did not doubt the *bona fides* of the defendant's claim in the suit and was not inclined to hold that the

* Appeal from Appellate Decree, No. 49 of 1919, against the decree of Ganendra Nath Mukerjee, Additional Subordinate Judge of Khulna, dated June 1, 1918, reversing the decree of Nitai Charan Ghosal, Munsif of Bagerhat, dated July 28, 1917.

defendant's claim was a fraud in its inception, and in that view refused to set aside the decree as vitiated by fraud. The lower Appellate Court, however, held that the decree in question was not for a true claim and was fraudulent and that it was quite probable that the defendant put forth a false claim to defeat the decree of the plaintiff against him.

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Babu Kshitish Chandra Chakravarty, for the appellant, submitted that the lower Appellate Court could not set aside the previous decree as under s. 27 of the Provincial Small Cause Courts Act (IX of 1887), it had become final. Moreover, unless it was found that there was some contrivance or fraud on the part of the defendant by which the plaintiff was prevented from placing his case before the Court, its decree could not be set aside on the ground of fraud: *Manindra Nath Mitra v. Hari Mondal* (1). Decree could not be vacated on the ground that it was procured by perjured evidence in a false case.

Babu Atindra Nath Mookherjee (for *M. A. K. Fuzlul Huq*) and *Babu Probodh Chandra Kar*, for the respondents, who referred to *L. Chinnayya v. K. Ramannu* (2), were not called upon.

TEUNON AND NEWBOULD JJ. This appeal arises out of a suit brought by the plaintiff to have an *ex parte* decree obtained against him set aside on the ground of fraud. In the Court of first appeal he succeeded in obtaining a decree. In this appeal it is contended *first*, that the decree set aside being a Small Cause Court decree is final, and, *secondly*, that in effect this was a suit brought to have a decree set aside on the ground that it was obtained by perjured evidence. A Small Cause Court decree is final in the sense that no

(1) (1919) C. 24 W. N. 133.

(2) (1912) I. L. R. 38 Mad. 203.

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appeal lies against it; but it cannot on that ground be urged that it may not be set aside on the ground of fraud. The present case is not a case in which it has been found merely that the decree was obtained by perjured evidence. It has been found here that the suit or claim was a false suit or claim and the falsity of the claim was necessarily known to the party putting forward the claim. That being so, it is clear that the decree in question has been properly set aside; and in this connection we may refer to the case of *Manindra Nath Mitter v. Hari Mondal* (1). The appeal is dismissed with costs.

P. M. C.

Appeal dismissed.

(1) (1919) 24 C. W. N. 133.

APPELLATE CIVIL.

Before Teunon and Chaudhuri JJ.

BINODINI HAZRANI

v.

SUSTHEE HAZRANI.*

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 June 1.

Hindu Law—Succession—Custom of remarriage—Whether a childless widowed daughter of child-bearing age free to remarry, by custom, an heir of her father.

In the caste in which widow remarriage is a custom, a childless widowed daughter of child-bearing age is not entitled to succeed to her father's property along with the married daughter having a son, in the absence of any proof of custom entitling her to succeed under such circumstances.

SECOND appeal by Binodini Hazrani, the plaintiff.

The plaintiff instituted the suit for recovery of khas possession of the disputed lands on declaration

*Appeal from Appellate Decree, No. 89 of 1918, against the decree of M. Yusuf, District Judge of Murshidabad, dated July 19, 1917, modifying the decree of Behari Lal Sarkar, Munsif of Kandi, dated June 14, 1916.