

APPELLATE CIVIL.

Before Mr. Justice Boddam and Mr. Justice Moore.

VENKATAPPA NAICK (TENTH PLAINTIFF), APPELLANT,

v.

SUBBA NAICK (DEFENDANT), RESPONDENT.*

1905
October 17,
19,

Fraud—Judgment obtained by perjury may be set aside on the ground of fraud.

A suit will lie to set aside a judgment on the ground that it was obtained by fraud committed by the defendant upon the Court by committing deliberate perjury and by suppressing evidence.

The law on this point is the same in India as in England.

SUIT to set aside a decree obtained by the defendant against the plaintiff on the ground that the defendant obtained the same by giving false evidence and suppressing a material document, and to recover the amount realized by the defendant under such decree, with interest and damages.

Both the lower Courts in dismissing the suit held that the fraud alleged was not of a nature for which a suit like the present lay.

The tenth plaintiff preferred this second appeal.

V. Krishnaswami Ayyar and S. Srinivasa Ayyar for appellant.

C. Ramachandra Rau Sahib for respondent.

JUDGMENT.—This case has apparently been disposed of upon the preliminary issues as to whether the plaintiff has any cause of action and whether the Court has jurisdiction to entertain the suit without giving the plaintiff any opportunity to put in his evidence.

The suit is to set aside a judgment on the ground that it was obtained by fraud and the fraud alleged is perjury by the defendant and the suppression of evidence. The law as to the right to bring such an action is the same in this country as in England and in England the law is authoritatively and finally laid down in *Abouloff v. Oppenheimer*(1) and *Vadala v. Lawes*(2) where the observations on the law by James, L.J., in *Flower v.*

* Second Appeal No. 927 of 1903, presented against the decree of W. W. Phillips, Esq., District Judge of Tinnevely, in Appeal Suit No. 302 of 1902, presented against the decree of M.R.Ry. T. Krishnaswami Naidu, District Munsif of Satur, in Original Suit No. 208 of 1902.

(1) L.R., 10 Q.B.D., 295.

(2) L.R., 25 Q.B.D., 310.

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Lloyd(1) are dealt with and disposed of. Lindley, L.J., in his judgment in *Vadala v. Lawes*(2) says that the rule is perfectly well known and established, that a party to an action can impeach the judgment in it for fraud whether the judgment is that of an English Court or of a foreign Court, and that not only, where there has been a fraud on the Court by what is called extrinsic circumstances, but also where the plaintiff has obtained judgment by the use of perjured evidence that is such fraud as would enable the defendant to impeach the judgment; and at page 319 quoting the judgment of Brett, L.J., in *Abouloff v. Oppenheimer*(3) he says "I will assume even that the defendants gave the very same evidence that they propose to adduce in this action; nevertheless, the defendants will not be debarred at the trial of this action from making the same charge of fraud, and from adducing the same evidence in support of it; and if the High Court of Justice is satisfied that the allegations of the defendants are true, and that the fraud was committed, the defendants will be entitled to succeed in the present action." It follows from the above that there is nothing to preclude the Court from entertaining the plaintiff's action; and if the plaintiff succeeds, when he has an opportunity of producing his evidence, in satisfying the Court that the judgment he seeks to set aside was obtained by a fraud committed by the defendant upon the Court by committing deliberate perjury and suppressing evidence, the plaintiff will be entitled to succeed. We therefore set aside the decrees of the Courts below and remand the suit to the District Munsif's Court for disposal according to law.

The costs in this and the lower Appellate Court will abide and follow the result.

(1) L.R., 10 Ch. D., 327.

(2) L.R., 25 Q.B.D., 310,

(3) L.R., 10 Q.B.D., 295.