

1885

SHROBARAN  
v.  
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sought, but the real object aimed at is the temporary ejection of the occupancy-tenant. The suit is one which, professing to be based on custom, and on the good-will and consent of all concerned, seeks to force the custom upon a most unwilling tenant, who has successfully resisted the landlord in the Revenue Court.

PETHERAM, C. J.—I am of the same opinion.

## APPELLATE CIVIL.

1885

July 8.

*Before Sir W. Comer Petheram, Kt., Chief Justice and Mr. Justice Straight.*

RAM SAROP AND ANOTHER (PLAINTIFFS) v. RUKMIN KUAR AND OTHERS (DEFENDANTS)\*

*Suit to set aside a decree on the ground of fraud—Act I of 1877 (Specific Relief Act), s. 42.*

Subsequent to a decree for partition of an ancestral estate, the creditors of one of the parties thereto who, from the time of the suit, had borrowed money from them on the security of his rights and interests in the estate, brought a suit against their debtor, and obtained a decree for the monies due to them. They then sued all the parties to the partition for a declaration that the decree then passed was, so far as it affected their (the plaintiffs') interests, fraudulent and collusive, and of no effect.

*Held*, that the suit was not maintainable.

THE facts of this case were as follows:—One Jai Singh had two wives. By his first wife he had a son called Beni Singh, and by his second, two sons called Dammar Singh and Shib Sahai. Beni Singh sued his father for partition of a moiety of the ancestral estate of the family, and obtained a decree.

This decree was followed by a partition of the estate between him and his father. Subsequently Rukmin Kuar, the wife of Beni Singh, sued her husband and her minor sons, for a one-third share of the estate, on the ground that she was entitled to such share on partition. On the 27th July, 1883, she obtained a decree for a one-fifth share of the estate, that is to say, to an equal share with her husband and his three sons.

From the time Beni Singh sued his father for partition, he commenced to borrow money from the plaintiffs in the present suit,

\* Second Appeal No. 1263 of 1884, from a decree of A. F. Millett, Esq., District Judge of Shahjahanpur, dated the 12th May, 1884, reversing a decree of Mirza Abid Ali Beg, Subordinate Judge of Shahjahanpur, dated the 25th January, 1884.

Ram Sarup and Behari Lal, on the security of his rights and interests in the estate. In November, 1883, the plaintiffs obtained a decree against him for the monies due to them. They then brought the present suit against him, Jai Singh, Rukmin Kuar, Dammar Singh and Shib Sahai, to have it declared that the decree which Rukmin Kuar had obtained on the 27th July, 1883, was, so far as it affected their interests, fraudulent and collusive, and of no effect. The Court of first instance gave the plaintiffs a decree. On appeal by all the defendants excepting Beni Singh, the lower appellate Court dismissed the suit, on the ground that it was not established that Rukmin Kuar's decree had been obtained by fraud and collusion. Both the Courts held that the suit was maintainable, being of opinion that that decree was a sufficient ground for the admission of a suit under s. 42 of the Specific Relief Act.

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RAM SARUP  
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KUAR.

In second appeal, it was contended for the plaintiffs that the lower appellate Court had wrongly decided that the decree of the 27th July, 1883, had not been obtained by fraud and collusion.

Pandit *Bishambar Nath*, for the appellants.

Mr. *T. Conlan* and Babu *Dwarkanath Banerji*, for the respondents.

PETHERAM, C. J.—I think that this appeal must be dismissed with costs. The action was brought to set aside a decree which was passed in a Court of competent jurisdiction, and which could have been appealed, and was subject to be set aside if wrong. If the decree in the first suit was wrong, it was one that was subject to appeal as between the parties. If the decree was between other parties, and was obtained by fraud, that fraud may be subject of a suit when it has affected the rights of persons other than the parties to the fraudulent decree. I cannot see how a suit of this kind will lie. S. 42 of the Specific Relief Act does not authorize it, nor does any other law or rule.

The learned Judge was right in deciding as he did, and this appeal must be dismissed with costs.

STRAIGHT, J.—I concur in the order of the learned Chief Justice that this appeal must be dismissed with costs.

*Appeal dismissed.*