1904
March 21.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Burkitt.

NATHU RAM AND OTHERS (PLAINTIFFS) *v.* KALIAN DAS AND OTHERS (DEFENDANTS).*

Jurisdiction—Competence of Court having jurisdiction to hear a suit to decide every question arising in the suit—Limitation.

Where a Court is competent to hear a particular suit it is competent to decide every question whether of limitation or any other matter arising in the suit. If it decides such question wrongly, it does not thereby lose its jurisdiction, and its decree, though possibly wrong, is not a nullity. The decree is a perfectly good decree until reversed in some manner provided by law. *Malkarjun* v. *Narhari* (1) and *Caston* v. *Caston* (2) referred to.

THE facts of this case are fully stated in the judgment of the Court.

Babu *Jogindro Nath Chaudhri*, Pandit *Sundar Lal* and Pandit *Moti Lal Nehru*, for the appellants.

Mr. *Abdul Majid*, Babu *Durga Charan Banerji* and Pandit *Baldeo Ram*, for the respondents.

STANLEY, C.J., and BURKITT, J.—This is an appeal from an appellate decree of the District Judge of Aligarh by which he reversed a decree of the Additional Subordinate Judge of that district passed in favour of the appellant, the plaintiff in the suit.

The suit arose out of the following circumstances:—

One Nauhar mortgaged on March 21st, 1871, his interest (amounting to one-third) in mauzas Beohepur and Chalasni to secure the sum of Rs. 3,000 with interest. The mortgagee was one Gumani, whose representatives are the respondents here. The mortgage was simple originally, but contained a provision that in certain eventualities it was to become usufructuary and possession was to be given to the mortgagee. In accordance with that provision the mortgagee was under a decree of Court put into possession of the property on February 4th, 1880.

Previously, on February 28th, 1873, Nauhar had mortgaged his equity of redemption (of his share) in mauza Beohepur to one Dwarka Das, whose sons are the plaintiffs appellants here.

* Second Appeal No. 171 of 1902, from a decree of H. D. Griffin, Esq., District Judge of Aligarh, dated the 7th of January, 1902, reversing a decree of Maulvi Maula Bakhsh, Additional Subordinate Judge of Aligarh, dated the 25th of June 1901.

(1) (1900) I. L. R., 25 Bom., 337. (2) (1899) I. L. R., 22 All., 270.

In August, 1880, Dwarka Das instituted a suit on his mortgage of February 1873, and on a confession of judgment by his mortgagor obtained a decree on September 15th, 1880, for sale of the property, and also a personal decree against his debtor. It is admitted that the prior mortgagee, Gumani, was not a party to the suit, as was, we understand, the almost invariable practice before the Transfer of Property Act (No. IV of 1882) was passed. In execution of that decree the mortgagor's interest in the one-third of Bechepur was sold, subject to Gumani's prior incumbrance, and was purchased by the plaintiff mortgagee Dwarka. But as the proceeds of the sale of the mortgagor's interest in Bechepur was not sufficient to discharge the amount due on the mortgage, Dwarka, in execution of the personal decree against his mortgagor, attached the latter's equity of redemption (of his share) in mauza Chalasni and himself purchased it at auction on June 7th, 1884, and got formal possession from the Court. The present suit has been instituted by his sons against the sons and other representatives of Gumani for redemption of Nauhar's one-third interest in the mortgage of March 21st, 1871. The learned Additional Subordinate Judge gave the plaintiffs a decree for possession without making any payment to the prior incumbrancer. He found that the amount of the mortgage debt attributable to Chalasni had been satisfied by the usufruct. On appeal to the District Judge that decree was reversed and the suit was dismissed. Hence this appeal by the plaintiffs.

The learned District Judge gave effect to a plea raised by the defendants which the Court of first instance had overruled. That Court describes the plea in the following words:—

"It is objected by the defendants that at the time Dwarka Das instituted his suit and the confession decree of the 15th of September 1880, was passed, the personal remedy against Nauhar Singh had become barred by time, and therefore no sale could have been held in execution of a decree which, so far as it was a money decree, was not a legal and proper decree." The limitation rule referred to is that to be found in article 116 of the second schedule to the Limitation Act of 1877. The contention was that under that article a suit for the personal

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remedy was barred in August, 1880. This objection was overruled by the learned Additional Subordinate Judge, who remarked—"assuming that the defendants can question the validity of the decree of the 15th September, 1880, they have not produced a tittle of evidence to support the contention." And again —"If he (*i.e.*, mortgagor) and Dwarka Das acted in concert to defraud the mortgagee, the fraud must be proved, but it has not been attempted to be proved." In the first clause of his memorandum of appeal against the decree of the Court of first instance the defendant appellant Kalian Das alleges as follows :—"There is proof on the record that Dwarka Das instituted this suit against Nauhar Singh on his mortgage-deed after six years and obtained a confession decree on the 15th of September, 1880. That decree could not legally have been passed against the person of Nauhar Singh, nor were the appellant and his ancestors a party thereto." This shows that the matter of which the appellant complained was that the Court which passed the decree of September 15th, 1880, had acted wrongly and illegally in giving a decree for a time-barred claim. *No allegation of fraud or of collusion* was made against Dwarka Das or Nauhar Singh. The Court alone is blamed for having acted illegally. This objection found favour in the eyes of the learned District Judge, who overruled the decision of the Court of first instance and laid down in very peremptory and positive terms the law on this question as he conceived it to be, but did not cite any authority in support of his opinion. After finding that the decree of September 15th, 1880, was passed more than six years from the date of Dwarka Das' mortgage of the 28th of February, 1873 (which no doubt is true) the learned Judge proceeds to hold that "on the date of the decree the Court which gave it was not competent to pass a personal decree against Nauhar Singh, the relief against Nauhar Singh personally being barred by six years' limitation. The decree was, it may be noted, a consent decree, but a judgment-debtor's name cannot give a Court jurisdiction to pass a decree which is barred by limitation. Under the circumstances it was unnecessary for appellant to go further and plead that the decree had been obtained by fraud." (*N.B.*—No allegation of fraud had been made

anywhere.) "He had made out a *prima facie* case that the decree was invalid." Then, after stating that the respondents had failed to prove any circumstances which would validate the personal decree, the learned Judge proceeds:—"It must be presumed that Dwarka Das had knowledge of the fact that the personal decree was invalid. The personal decree being invalid, the execution of proceedings taken under it, including the purchase by Dwarka Das of the mortgagor's rights and interests in mauza Chalasni, are a nullity."

This exposition of the law is in our opinion wholly wrong from beginning to end. It is a mere travesty of the law as declared by their Lordships of the Privy Council and by this Court. According to the learned Judge, if a Court competent to hear a suit instituted before it decides that suit wrongly on a question of limitation by giving a decree in favour of the plaintiff, instead of dismissing the claim as time barred, such decree (though unreversed and final) is a "nullity," the Court which passed it "not being competent" to pass such a decree. Apparently the learned Judge would distinguish between the competency of a Court to hear a suit and its competency to pass a decree in that suit which the learned Judge might consider to be a wrong decree. The Court according to him has jurisdiction to decide rightly a question of (*e.g.*) limitation, but if it decide wrongly, the decree is a nullity, that is to say, a Court which decides such a question wrongly loses its jurisdiction. Carried to the legitimate consequences, the result of this proposition is that a Court which decides wrongly any question raised in a suit before it loses its jurisdiction. There is no reason why the proposition should be confined to a question of limitation only. We are unable to appreciate this distinction. If a Court is competent to hear and to decide a suit, it is competent to decide it wrongly as well as rightly, and as long as the decision stands unreversed by a higher tribunal on appeal it is a valid and binding decree.

In the case of *Malkarjun* v. *Narhari* (1), where it was contended that certain execution proceedings were a nullity, where the execution Court had served notice of the proceedings

(1) (1900) I. L. R., 25 Bom., 337.

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on the wrong person, and on his objection had wrongly decided that he was the right person, their Lordships of the Privy Council, at page 347, observed that "in so doing the Court was exercising its jurisdiction. It made a sad mistake, it is true; *but a Court has jurisdiction* to decide wrong as well as right. If it decides wrong, the wronged party can only take the course prescribed by law for setting matters right, and if that course is not taken the decision, however wrong, cannot be disturbed." In their commentary on the Law of Evidence, Messrs. Ameer Ali and Woodrooffe (p. 379, 2nd edition) state the law to be that the "competency of a Court does not depend on whether a point which it decides has been raised or argued by party or by counsel. It cannot be said that wherever a decision is wrong in law or violates a rule of procedure the Court must be held incompetent to deliver it. It has never been and could not be held that a Court which erroneously decrees a suit which it should have dismissed as time-barred or barred by the rule of *res judicata*, acts without jurisdiction and is not competent to deliver its decree." The above statement of the law is in the main founded on the elaborate judgment of the late Chief Justice Sir Arthur Strachey in the case of *Caston* v. *Caston* (1). In that case it was contended that a decree absolute of nullity of marriage pronounced by the High Court was null and void because it was pronounced before six months had elapsed from the date of the decree of the District Judge (Judicial Commissioner of Oudh) which it confirmed. This contention was based on the wording of section 17 of the Indian Divorce Act, No. IV of 1869. At page 280 of the report the learned Chief Justice observed:—"Let us suppose that at the hearing the petitioner or the respondent has formally taken the objection that an adjournment was necessary as under the provisions of section 17, the decree could not be confirmed until the six months' period had expired. Suppose further that after full argument on the point the High Court had taken a view of section 17 different from that in the Bombay case, and had confirmed the decree of the Judicial Commissioner accordingly. In such a case surely the Court would not only be competent

(1) (1899) I. L. R., 22 All., 270.

but bound to decide the question thus raised and argued. If competent to consider and decide the question, it cannot be supposed that the Court was competent to decide it in one particular way only. This shows that even if the decision were erroneous or irregular the Court was nevertheless competent to deliver it." Several other passages from the same judgment to the same effect might be cited. The principle which they all lay down is that once the competency of a Court to hear and decide a suit is admitted that Court is competent to decide all questions of law or of fact which may arise in it.

The rule stated by the learned District Judge in the case we are now considering practically lays down that a Court competent to hear and decide a suit is competent only as long as it decides a question such as limitation rightly, but has no jurisdiction to decide that question wrongly, and if it do decide wrongly the decree is a nullity. That such is not a correct exposition of the law is abundantly shown by the cases we have cited above.

The way in which the respondents could successfully attack the decree of September 15th, 1880, was under section 144 of the Evidence Act, by showing that that decree had been "delivered by a Court not competent to deliver it, or was obtained by fraud or collusion." Admittedly that decree was made by a Court which was competent to hear the suit, and was therefore, in our opinion, "competent" to decide every question, whether limitation or any other matter, arising in the suit, and whether raised by party or counsel. If it did decide such a question wrongly, it did not thereby lose its jurisdiction, and its decree —though possibly wrong—is not a nullity. The decree is a perfectly good decree until reversed in the manner pointed out by their Lordships of the Privy Council in the case cited above. As to fraud or collusion, it is sufficient to say that, as pointed out by the learned District Judge, no allegations either of fraud or of collusion were made by the defendants.

For the above reasons we are of opinion that the decision of the District Judge is wholly wrong. We set it aside with costs, and restore the decree of the Court of first instance in favour of the plaintiff-appellant.

Appeal decreed.