

1907  
March 36.

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

UMRAO SINGH (DEFENDANT) v. HARDEO AND ANOTHER (PLAINTIFFS).<sup>\*</sup>—  
Suit to set aside a decree on the ground of fraud—No further relief claimed—  
Jurisdiction.

Save under special circumstances, a suit to set aside a decree obtained by fraud, in which no other relief whatever is claimed, cannot be maintained in any district outside the district in which the fraud was committed and the fraudulent decree was obtained. *Mewa Lall Thakur v. Bhujhun Jha* (1), *Abdul Mazumdar v. Mahomed Gazi* (2), *Fran Nath Roy v. Mohesh Chandra Chowdhry Moitra* (3), *Kedar Nath Mukerjee v. Prosonna Kumar Chatterjee* (4), *Behari Lal v. Pokhe Ram* (5), *Nistarini Dassi v. Nundo Lal Bose* (6) and *Bibee Soloman v. Abdool Aziz* (7) referred to.

THE facts out of which this appeal arose were as follows:—

The appellant, Umrao Singh, who resides in Calcutta, obtained a decree in the Small Cause Court at Calcutta upon a promissory note against the respondents Hardeo and another. This decree was transferred to Agra for execution. The respondents then instituted a suit in the Munsif's Court at Agra, where they reside, to have the decree obtained in Calcutta set aside on the ground that it was obtained by fraud. The only prayer for relief was that "the decree No. 8883 of 1902, passed by the Small Cause Court Judge in Calcutta on the 21st of June 1902, in favour of the defendant and which the defendant obtained by fraud, may be set aside (*mansukh*) and declared to be void." No other relief whatever was sought.

The Court of first instance found that in the suit in the Small Cause Court at Calcutta there had been no service of summons on the defendants, and that the decree had been obtained by fraud. That court accordingly gave the plaintiff a decree, which was upheld (in appeal by the lower appellate Court. The defendant then appealed to the High Court, and this appeal coming before a single Judge of the Court was dismissed. The defendant thereupon instituted the present appeal under section 10 of the Letters Patent of the Court.

<sup>\*</sup> Appeal No. 55 of 1906, under section 10 of the Letters Patent.

(1) (1874) 13 B. L. R., App., 11.      (4) (1901) 5 C. W. N., 559.  
(2) (1894) I. L. R., 21 Calc., 605.      (5) (1902) I. L. R., 25 All., 48.  
(3) (1897) I. L. R., 24 Calc., 546.      (6) (1899) I. L. R., 20 Calc., 908.  
(7) (1879) 4 C. L. R., 366.

Babu Parbati Charan Chatterji, for the appellant.

Munshi Mohan Lal Sandal, for the respondents.

STANLEY, C.J., and BURKITT, J.—This is an appeal under the Letters Patent from the decree of one of our colleagues sitting singly, confirming a decree of the Munsif of Agra, which was upheld by the Subordinate Judge of that district. The facts are shortly as follows:—

The appellant, who resides in Calcutta, obtained a decree in the Small Cause Court at Calcutta, upon a promissory note against the respondents. This decree was transferred to Agra for execution. The respondents then instituted a suit in the Munsif's Court at Agra, where they reside, to have the decree obtained in Calcutta set aside on the ground that it was obtained by fraud. The only prayer for relief was that "the decree No. 8833, of 1902, passed by the Small Cause Court Judge in Calcutta on the 21st of June 1902, in favour of the defendant and which the defendant obtained by fraud, may be set aside (*mansukh*) and declared to be void." No other relief whatever was sought. This fact must be kept in view. Both the lower Courts held that in the Calcutta [suit there was no service of the summons upon the defendants, and that the decree was obtained by fraud. On appeal the learned Judge of this Court upheld the decisions of the Courts below. In the course of his judgment he observes:—"It has been admitted (and could not be disputed) that a suit to set aside a decree obtained by fraud is a suit which can be brought. In my judgment it is quite clear that such a suit can be brought in any Court which is competent to hear any other dispute between the same parties; in other words, the mere fact that the suit is one to set aside a decree makes no difference so far as the tribunal is concerned." The question for our determination is whether the Munsif of Agra had jurisdiction to entertain a suit in which the sole relief sought for was to have a decree of the Small Cause Court of Calcutta set aside on the ground of fraud. In the case of *Mewa Lall Thakur v. Bhujhun Jha* (1) which was a suit to set aside a decree on the ground of fraud, Phear, J., who delivered the judgment of the Court, remarked that it seemed to the Court that the suit had been to a considerable extent

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misdirected, that the immediate aim of the plaintiff was to get a decree, which was passed against him by a competent Court, set aside on the ground that it was obtained by fraud and collusion," and then says:—"The proper course for obtaining such an object as that is to go to the Court which passed the decree, either within the time specified in section 119 of the Code of Civil Procedure (i.e., Act VIII of 1859) if the circumstances are such as would justify action under that section, or at any time (so that it be done with due diligence) if the ground upon which the decree is sought to be set aside be a good ground for reviewing and altering the judgment upon which the decree was passed. And if the case of the plaintiff be, as it is in the present instance, that the decree was obtained by fraud, no better ground for review could be alleged; though, of course, it need hardly be added that, even in such a case as that supposed, it is necessary for the person aggrieved to apply to the Court for a review with due diligence and without loss of time as soon as reasonably may be after the discovery of the fraud. In saying this we do not in the least desire to question the right of every Court to disregard or rather to consider of no force decrees of other Courts which may be shown to its satisfaction to have been obtained by fraud." He afterwards states that "the proceeding which the plaintiff ought to have adopted for the purpose of obtaining the relief he required was to apply to the Court which passed the decree and to get that Court to rectify the decree or to set aside or to alter it in such a way as right and justice required." In later cases it has been held that a decree obtained by fraud may be set aside in a separate suit, but so far as we are aware in all these cases substantive relief in addition to the setting aside of the decree was sought. In *Abdul Mazumdar v. Mahomed Gazi* (1) it was held that a suit will lie to set aside a decree and the sale held in execution of that decree, when both the sale and the decree are impeached on the ground of fraud. The suit in that case was not merely to have the decree set aside, but was a suit for a declaration of title to and for confirmation of the possession of the plaintiffs of certain immovable property after setting aside an *ex parte* decree and the sale in execution thereof on the ground that the decree and the execution

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sale were fraudulent. To the same effect was the decision in *Pran Nath Roy v. Mahesh Chandra Moitra* (1). In that case also the plaintiffs sought to recover possession of property which was sold in execution of a decree which had been obtained by fraud. In the case of *Kedar Nath Mukerjee v. Prosonna Kumar Chatterjee* (2) a judgment-debtor, against whom a decree was alleged to have been fraudulently obtained in the Court of Small Causes at Krishnagar, in execution of which certain property was brought to sale and was purchased by the defendant, instituted a suit to set aside the decree and the sale in execution whereof the property was sold in the Munsif's Court at Katwa, that being the Court in which the execution proceedings including the sale took place and within whose jurisdiction the property in suit was situate. It was held by Ghose and Stevens, JJ., that the suit was maintainable. In the course of their judgment the learned Judges, however, say:—"It may not be competent to the Munsif of Katwa to set aside the decree passed by the Small Cause Court of Krishnagar as fraudulent, but we are disposed to think that it is competent to him to investigate the question as to the character and validity of the decree for the purpose of giving relief to the plaintiff such as he may be entitled to in respect to the land which he has lost by reason of the sale held in execution of that decree." The case of *Banke Behari Lal v. Pokhe Ram*, (3) is also in point. In that case the plaintiff alleged that he was the adopted son of one Balmakund and that the defendants who were the trustees of the will of Balmakund had entered into a collusive suit which they had fraudulently compromised with the result that one defendant had obtained from the Court a decree for a considerable sum payable out of the property left by Balmakund which property the plaintiff claimed as his own. The decree-holder had the decree which was obtained in Calcutta, transferred for execution to Cawnpore, and was seeking to execute it against the estate of Balmakund within the jurisdiction of the Subordinate Judge of Cawnpore. The plaintiff then filed a suit in the Court of the Subordinate Judge of Cawnpore, and prayed in effect that the compromise and the decree founded thereon

(1) (1897) I. L. R., 24 Cal., 546.      (2) (1901) 5 C. W. N., 559.  
 (3) (1902) I. L. R., 25 All., 48.

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might be declared to be null and void as against him and that an injunction might be issued restraining the execution of the decree. It was held by our brothers Banerji and Aikman that, although the decree was passed in Calcutta, yet inasmuch as the property affected by the decree was in Cawnpore, and execution was being taken out there, a material portion of the plaintiff's cause of action arose in Cawnpore, and the Subordinate Judge of that place had jurisdiction to try the suit. This decision goes further than any of which we are aware, but it does not go so far as the decision against which the appeal before us has been preferred. Banerji, J., in delivering the judgment of the Court expressed his concurrence in the view of the law laid down in the case of *Nistarini Dassi v. Nundo Lall Bose* (1), and remarks "if the allegation of fraud and collusion made by the plaintiff, be established, the Court below would be competent, if it otherwise had jurisdiction over the suit, to declare that the compromise and the decree in question are void and ineffectual as against the plaintiff. The plaintiff does not ask the Court to set aside the decree of the Calcutta High Court and therefore the ruling in *Bibee Solomon v. Abdool Aziz* (2), on which the learned counsel for the respondent relies, has no application." In the case before us the plaintiff asked the Court to set aside the decree of the Calcutta Court and that alone. No other relief was prayed for. The question before us is very fully discussed in the case of *Nistarini Dassi v. Nundo Lall Bose*. The authorities seem to us to establish that, save under special circumstances such as those which are to be found in the cases to which we have referred, a suit to set aside a decree obtained by fraud, in which no other relief whatever is claimed, cannot be maintained in any district outside the district in which the fraud was committed and the fraudulent decree was obtained. We think that the language of the learned Judge of this Court is altogether too wide. Startling consequences would be possible if it were the law that a Court in these Provinces could set aside on the ground of fraud practised in another province a decree obtained in such province. This would be virtually to subject the decree of the Civil Courts to revision and reversal by superior, or even equal or inferior Courts to which

(1) (1899) I. L. R., 26 Cal., 903.

(2) (1879) 4 C. J. L. R., 363.

they are not subordinate. We, therefore, allow the appeal, set aside the decree of the learned Judge of this Court and also the decrees of the lower courts and dismiss the plaintiff's suit with costs in all Courts.

*Appeal decreed.*

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## APPELLATE CIVIL.

1907  
February 13.

*Before Mr. Justice Sir George Know and Mr. Justice Richards.*

KADHU SINGH (PLAINTIFF) v. BALJIT SINGH AND OTHERS  
(DEFENDANTS).\*

*Civil Procedure Code, section 506— Arbitration— Application for reference signed by pleader holding a defective vakalat-namah.*

An application under section 506 of the Code of Civil Procedure for a reference to arbitration was made by the parties to a pending suit. This application was signed on behalf of the defendants by some of the defendants personally, and on behalf of the others by a pleader. It appeared, however, that the pleader's vakalat-namah had not been signed by one of the defendants on whose behalf the pleader had signed. *Held* that, in the absence of any circumstance to estop the defendant who had not signed from objecting to the reference, the reference to arbitration and all subsequent proceedings founded thereupon were invalid. *Pitam Mal v. Sadiq Ali* (1) distinguished.

THE suit out of which this appeal arose was brought by the plaintiff to enforce a mortgage executed by one Kunjal Singh. The mortgagor, his son's grandsons and great-grandsons, were made parties to the suit, and the plaintiff sought to obtain a decree against the joint ancestral property of the defendants. A joint written statement was filed on behalf of all the defendants by a pleader named Munna Lal. Subsequently the defendants applied for a reference to arbitration, and the suit was referred to arbitration and award was made. In these proceedings the submission to arbitration was signed by three of the defendants, Baljit Singh, Punni Singh and Tara Singh, and on behalf of the rest by Munna Lal. Objections were taken to the award by two of the defendants, but these were overruled and a decree passed upon the award. Against this decree one of the defendants, Daryao Singh, appealed upon the ground that he had never executed the vakalat-namah in favour of Munna Lal in virtue of which

\*First Appeal No. 61 of 1906, from an order of E. O. E. Leggatt, Esq., District Judge of Bareilly, dated the 19th of April 1906.

(1) (1898) I. L. R., 24 All., 229.